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Supreme Court, U.S.
FILED

No. 01 166 JUL 25 2001

OFFICE OF THE CLERK

In the Supreme Court of the United States

AFSCME, Council #15, Local 1159, AFL-CIO,
Petitioner,

v.

Bridgeport Guardians, Inc.;
City of Bridgeport,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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246 pp

QUESTION PRESENTED

This Court has held that a voluntary settlement in the form of a Title VII consent decree between one group of employees and their employer cannot dispose of the conflicting claims of another group of employees who do not join in the agreement even if the second group is a party to the litigation. *Firefighters v. Cleveland*, 478 U.S. 501, 529 (1986). This Court has also held that fundamental limitations on a district court's remedial powers prohibit imposing anything other than the minor and ancillary provisions of a Title VII injunctive order on an innocent party. *General Building Contractors Assn. v. Pennsylvania*, 458 U.S. 375, 399 (1982). The Second Circuit, however, held in this case that a district court could in the absence of any wrongdoing by petitioner Union, order detailed changes to the workplace disciplinary process which were negotiated between the employer and a minority group of employees and which not only alter existing provisions in the collective bargaining agreement but indefinitely suspend the Union's right under state law to negotiate a mandatory topic of collective bargaining.

The question presented is whether the district Court's Order of March 24, 2000 was a consent decree which improperly disposed of Union claims and if not, whether the burdens imposed on petitioner Union were minor and ancillary.

STATEMENT PURSUANT TO RULE 29.6

Petitioner AFSCME, Council 15, Local 1159, AFL-CIO is not a corporation.

The parties to the proceeding in the Second Circuit Court of Appeals whose judgment is sought to be reviewed were as follows:

Bridgeport Guardians, Inc. (Plaintiff-Appellee)

City of Bridgeport (Defendant-Appellee)

AFSCME, Council #15, Local #1159, AFL-CIO (Intervenor-Appellant)

Hispanic Society-Bridgeport Police Department, Inc. (Intervenor-Appellant)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW

The district court's opinion, (per Daly, D.J. (now deceased)) in the underlying action rendering judgment in favor of respondent Bridgeport Guardians, Inc. and against respondent City of Bridgeport (Appendix ("Pet.App.") 125a-164a) is published at 553 F. Supp 601. The district court's subsequent opinions, including the opinion which is the subject of this petition, are not otherwise published. The court of appeals' opinion (per Newman, C.J., joined by Leval and Sack, JJ.) affirming (Pet.App. 1a-19a) is published at 248 F.3d 66 (2nd Cir. 2001).

STATEMENT OF JURISDICTION

The court of appeals entered its opinion and order on April 26, 2001. Petitioners invoke this Court's jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The provisions of Article III, Section 1 of the Constitution of the United States are reprinted in the Appendix at 181a. The provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq., relevant to this petition are reprinted in the Appendix at 181a-183a. The provisions of Connecticut's Municipal Employees Relations Act, Conn. Gen. Stat. §§ 7-468, 7-473c (b), (c), (d) (2)-(5),

7-474, and 7-475, relevant to this petition are reprinted in the Appendix at 184a-187a..

The relevant provisions of Connecticut's Municipal Employees Relations Act, Conn. Gen. Stat. § 7-473c (d), (6), (9), and (10), inadvertently omitted from the Appendix, state as follows:

> (6)....the panel shall issue, upon majority vote, its decision on all unresolved issues set forth in the arbitration statement....
>
> ....
>
> (9) In arriving at a decision, the arbitration panel shall give priority to the public interest and the financial capability of the municipal employer, including consideration of other demands on the financial capability of the municipal employer. The panel shall further consider the following factors in light of such financial capability: (A) The negotiations between the parties prior to arbitration; (B) the interests and welfare of the employee group; (C) changes in the cost of living; (D) the existing conditions of employment of the employee group and those of similar groups; and (E) the wages, salaries, fringe benefits, and other conditions of employment prevailing in the labor market, including developments in private sector wages and benefits.
>
> (10) The decision of the panel and the resolved issues shall be final and binding upon the municipal employer and the municipal employee organization.
>
> ....

The provisions of the Bridgeport Connecticut Charter relevant to this petition are reprinted in the Appendix at 187a-

STATEMENT OF THE CASE

Petitioner labor union is party to a series of collective bargaining agreements which, among other things address the manner and means by which the City of Bridgeport, Connecticut may impose discipline upon its police officers. The agreements provide that serious discipline may only be imposed, after a full evidentiary hearing, by the City's Board of Police Commissioners, an institution in existence for over a century and comprised of citizens appointed from the community. The district court, over the Union's objection, adopted a detailed stipulation between the City and a fraternal organization of minority officers which effects certain changes in the disciplinary process, the major change being the replacement of the Police Commission with a court appointed hearing officers. The Second Circuit affirmed, holding that the district court's action was permissible under Title VII.

The court of appeals' holding merits this Court's review because the district court's Order altered a provision in the Union's collective bargaining agreement and indefinitely denies the Union its right under state law to negotiate concerning the disciplinary process. This goes well beyond the minor and ancillary relief this Court has held are the fundamental limits of a district court's authority over an innocent party in a Title VII case. In addition, the decision below conflicts with decisions of this Court holding that a consent decree may dispose of a party's claims or impose obligations on a party - absent that part's consent.

1. State law in Connecticut affords municipal employees the statutory right to collectively bargain terms and conditions of employment through their chosen exclusive representative. In the event of impasse, the terms of the collective bargaining agreement are established through interest arbitration

proceedings as municipal employees are prohibited from striking.

Petitioner Union is the recognized exclusive bargaining representative for all uniformed and investigatory employees at the Bridgeport, Connecticut police department, excluding the Chief of Police. The collective bargaining agreement prohibits the imposition of any discipline except for just cause and requires that discipline more severe than a fifteen (15) day suspension be imposed only the City's Board of Police Commissioners after notice and hearing.

The Board of Police Commissioners exists pursuant to a City charter provision enacted by the state legislature in 1868 and consists of seven (7) City residents appointed by the Mayor. The current collective bargaining agreement affords the Union the right to contest the Board's discipline decisions at arbitration before the American Arbitration Association.

2. The instant case was commenced in 1978 pursuant to Titles VI and VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d et seq. and 2000e, et seq. by Respondent Bridgeport Guardians an association of black police officers employed by the Respondent City at its police department which alleged that the City illegally discriminated against black officers with respect to job assignments, working conditions, and/or application of discipline. In 1982 the district court issued a Memorandum of Decision (Pet.App. 125a) finding that the City had engaged in illegal discrimination and in 1983 the district court issued a Remedy Order (Pet.App. 117a) which provided for the appointment of a Special Master who would be empowered, indefinitely, to "[r]eceive, investigate, and remedy all complaints of discriminatory treatment". (Pet.App. 120a-121a) A Special Master was appointed and as of May, 1999 had issued approximately sixty-five (65)

recommended rulings.[1] Pet.App. 54a.

3. One of the cases adjudicated before the Special Master involved the 1990 claim of Officer Joe Ann Simmons that Acting Sergeant James Halpin had harassed her by assigning her to a walking detail in inclement weather.

In 1991 the Master concluded that Sergeant Halpin's actions were in violation of the Remedy Order and ordered a bar against placing Officer Simmons under Halpin's supervision. In 1995 Officer Simmons complained that she had been assigned to shifts under Sergeant Halpin's supervision. The Master held a hearing and found that while Officer Simmons had been assigned to Sergeant Halpin's shift in violation of a court order, the violation resulted from "a series of mistakes totally lacking in willfulness" and Officer Simmons had been promptly transferred to another shift once she brought the matter to the Police Chief's attention. Pet.App. 82a-86a.

Nevertheless, the Master recommended that the Police Chief be disciplined in the form of a three (3) day suspension, that the City pay a $10,000 "coercive fine" to the "Guardians' treasury" and that the City determine whether discipline should be imposed on Sergeant Halpin and four (4) other supervisors. Pet.App. 75a-80a. The City filed extensive objections with the district court and, with the district court's approval, submitted the Master's findings as to Halpin and the four supervisors to the Police Commission to be heard as charges of misconduct. Pet.App. 60a. The Police Commission, after holding hearings, unanimously resolved to exonerate Sergeant Halpin and the four (4) other supervisors.

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[1] Of those matters actually litigated before the Special Master, the Respondent Guardians prevailed in fourteen (14) cases and the Respondent City prevailed in ten (10) cases. Pet.App. 54a.

In April of 1999, the district court overruled the pending objections to the recommended rulings in the Simmons matter, held the City in contempt of court, and directed the Special Master to review the procedures and process used by the Board of Police Commissioners in exonerating the respondent officers and to recommend further appropriate court action. Pet.App. 49a-61a. The trial court then inquired as to the possibility of settlement and stated:

> To the extent that this is a lightening rod, any of those issues, the problem is going to be that the continued flow of complaints is indicative of something wrong. Whether or not the complaints are eventually held to have merit is not the relevant point. They are still coming. And so we all would agree, I'm sure, that an institutional change from within is that which stands in the highest likelihood of making permanent and successful change rather than having to imposed by court order.

Pet.App. 38a-39a.

4. Although the City sought review by the Second Circuit by appeal and writ of mandamus, it also engaged in settlement negotiations with the Guardians before a private mediator. The Union was eventually invited to participate in these negotiations and was informed that the negotiations concerned proposed changes to the disciplinary process. In response to a direct inquiry by the Union, the City stated it would not submit to interest arbitration should the Union refuse to agree since the changes would be implemented in any event by consent decree through the district court. Interest arbitration is required by Connecticut law in the event municipal employees and their employer reach an impasse in collective

bargaining. The Union declined to participate in the negotiations and filed charges with Connecticut's State Board of Labor Relations alleging that the City was negotiating mandatory topics of collective bargaining with an entity other than the Union.

5. In January of 2000, the City and the Guardians entered into a Stipulation which resolved as moot all court orders and appeals arising from the Simmons matter and which moved the district court to order the implementation of certain changes to the disciplinary process. Pet.App. 33a. The stipulated changes included replacement of the Board of Police Commissioners with court-appointed "Hearing Officers" in all discipline cases except those initiated by citizen's complaint under the Barros Decree;[2] allowance of private attorney in lieu of Union representation at disciplinary proceedings; reduction of due process to notice of evidence and opportunity to challenge such evidence; and prohibition of settlements unless approved by the Hearing Officer. Pet.App. 42a-48a.

The Union and the Hispanic Society-Bridgeport Police

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[2] The City is party to another consent decree which issued in the case of Barros et al v. Walsh, et al, United States District Court, Civil Action No. B-482 (December 20, 1973) and which governs citizen complaints of misconduct by Bridgeport police officers. Pet.App. 171a, 178a. Under the Barros Decree, the Board of Police Commissioners conducts a hearing on the allegations after an investigation by police department's office of internal affairs and/or where the complaining citizen so requests. In the event the Board finds improper conduct has occurred, the Board imposes discipline upon the offending officer.

Department, Inc.[3] intervened and objected (Pet.App. 189a-203a) to the proposed changes and in March the district court overruled the objections and entered the Stipulation in its entirety as a court order. Pet.App. 20a-28a. The district court held that the 1983 Remedy Order preempted the collective bargaining agreement and Connecticut's Municipal Employees Relations Act to allow the changes effected by the Stipulation.

6. On petitioner's appeal the Second Circuit affirmed in an opinion that not only ignores the indefinite suspension of the Union's right to collectively bargain but also this Court's governing precedent concerning consent decrees and the fundamental limitations on remedies federal courts may impose on innocent parties. The Second Circuit held that because the district court allowed the Union to intervene and afforded the Union a limited[4] opportunity to object to the Stipulation, the district court's wholesale adoption of the Stipulation was not a consent decree but only a "modification of the 1983 Remedy Order" that "would have been justified...in 1983 and was fully justified 17 years later." Pet.App. 14a-15a. Viewing the district court's action as a mere modification of an earlier court order, the Second Circuit readily dismissed the lack of any new finding of current discrimination and portrayed the district court's

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[3] The Hispanic Society is a fraternal organization whose membership is comprised of Hispanic members of the Bridgeport Police Department.

[4] The district court refused to allow the Union to challenge the factual basis of its conclusions as to the Police Commission's "inadequacies or shortenings" because the Union never previously sought to intervene or appear before the Special Master on that issue.

enhanced role in managing the City's police department as appropriate "structural" relief. Id.

While the Second Circuit did not address the suspension of the Union's right to negotiate under state law, it did hold that the district court could "override" the municipal charter empowering the Police Commission in discipline matters. Pet.App. 15a-16a. The court of appeals stated that 42 U.S.C. § 2000e -7 "explicitly relieves employers from any duty to observe a state law 'which purports to require or permit' any discriminatory employment practice." Pet.App. 15a. The court of appeals found significant the Commission's discipline case backlog and its delays in reporting to the district court. The court of appeals also held that the alteration of the collective bargaining agreement effected by the Stipulation was permissible because it imposed no "substantial burden" upon the Union and it was not an attempt by the City to obtain what the City could not obtain at the bargaining table. Pet.App. 16a-19a.

7. This petition for a writ of certiorari followed.

REASONS FOR GRANTING THE WRIT

This petition should be granted because it presents an extreme example of a district court entering a Title VII consent decree over the objections of an intervening labor union. An employer facing a finding of Title VII liability purchased a settlement paid for entirely with petitioner Union's rights under an existing collective bargaining agreement and state labor statutes. When the Union intervened and objected, the district court dismissed the state law source of the Union's rights as preempted by Title VII and based its ratification of the settlement on seventeen (17) years of post judgment proceedings before a Special Master in which the Union was not a party.

Two compelling reasons exist for this Court's review of the Second Circuit's opinion affirming the district court's order. First, the Second Circuit departed from the rules established by this Court in *Firefighters v. Cleveland*, 478 U.S. 501 (1986) by allowing Respondents' settlement to dispose of the Union's present claims under state law and for the indefinite future. While the Second Circuit failed to appreciate the impact of the settlement on Union rights under the current collective bargaining agreement, it failed to even recognize the impact of the settlement on the Union's continuing right to negotiate a mandatory topic of collective bargaining. In short, a municipal employer was allowed to negotiate with a rival labor organization certain changes to the disciplinary process that the recognized representative of the bargaining unit would not agree to.

Second, the Second Circuit's decision conflicts with the holding of this Court in *General Building Contractors Assn. v. Pennsylvania*, 458 U.S. 375 (1982) by affirming the issuance of injunctive relief against an innocent intervener that goes well beyond the minor and ancillary provisions of the order. The court's action did not afford restitutionary relief to any injured party but it did afford the respondent employer certain advantages over petitioner Union. Furthermore, the justification for this remedy is a judicial determination improperly based on years of finding arising from an overbroad reference to a special master in violation of U.S. Const. Art. III § 1 and this Court's holding in *LaBuy v. Howes Leather Co.*, 352 U.S. 249 (1957). In 1983 the district court issued a Remedy Order appointing a Special Master to "receive, investigate, and remedy" all complaints of "discriminatory treatment, racial harassment or slurs" within the City's police department. Pet.App. 120a-121a. The Master has pursuant to this reference, received and adjudicated wholly new Title VII claims and his factual findings are insulated from district court review by the clearly

erroneous standard of Fed. R. Civ. P. 53 (e) (2).

The dispute which was resolved by the consent decree concerned respondent City's challenge to the Special Master's findings in a particular case as well as to his continuing role in adjudicating wholly new Title VII claims. The district court relied substantially on the Master's findings in issuing the consent decree and had expressly advised respondents that they consider an "institutional" settlement given the continued flow of complaints, **regardless of merit**, to the Master. Pet.App. 39a. Yet the Second Circuit's opinion wholly fails to even mention petitioner Union's claim in this regard.

I. Certiorari Is Warranted Because The District Court's Order Indefinitely Alters the Collective Bargaining Agreement And Suspends Collective Bargaining Under State Law So As to Impermissibly Dispose Of Union Claims

This petition concerns a challenge to an order entered by the district court approving and ratifying certain changes to the disciplinary process applicable to Bridgeport, Connecticut police officers charged with misconduct. These changes were agreed to by the original parties to this action, the City and the Guardians, in the form of a Stipulation and were objected to by the Union which intervened for that limited purpose.

The Union was not a party to the underlying lawsuit which led to the 1983 Remedy Order and, but for two minor exceptions, the Union has not been involved in the unique post judgment proceedings that have spanned the past seventeen years. Union intervention was forced in this instance, however by 42 U.S.C. § 2000-2(n) which provides that an entity with actual notice of a proposed Title VII

consent order must intervene and object or it will be precluded from objecting in the future. *Landgraf v. USI Film Products*, 511 U.S. 244, 251 (1994) (holding that Section 108 of Civil Rights Act of 1991 intended to overrule *Martin v. Wilks*, 490 U.S. 755 (1989)).

The Union did not intervene to defeat the Stipulation by withholding Union consent but rather because specific terms of the Stipulation compromised the Union's ability to serve as the exclusive collective bargaining agreement under state law. It is well established that a labor organization which does intervene in a Title VII action "does not have power to block the decree merely by withholding consent". *Local No. 93, International Association of Firefighters v. City of Cleveland*, 478 U.S. 501, 528-529, (1986). (hereafter "*Firefighters v. Cleveland*").

The consenting parties and the ratifying court may not, however, by means of a consent decree, "dispose of the claims of a third party, and a fortiori may not impose duties or obligations on a third party, without that third party's agreement." *Firefighters v. Cleveland*, supra, 478 U.S. at 529. Yet this is precisely what occurred in this case. The Union has, at all times, claimed an entitlement under Article 6 of the collective bargaining agreement to have all serious[5] disciplinary charges against its members decided by the Board of Police Commissioners. The Order clearly changes this for the indefinite future by substituting court-appointed Hearing Officers. Pet.App. 43a-48a.

This negotiated right to have serious discipline imposed by a panel of community members is not unlike the

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[5] "Serious" within the meaning of Article 6 of the collective bargaining agreement equates to situations where the Police Chief recommends discipline in excess of a fifteen (15) day suspension. Pet.App. 166a.

right of a criminal defendant facing serious charges to opt for a jury of his peers. The Police Commission is not only more likely to be responsive to community and departmental needs than a paid professional, it also has the fact-finding advantages of any multi-person entity in adjudicatory proceedings. While the consent Court's Order does not expressly impact the Union's right to contest discipline decisions at arbitration, the Hearing Officer's factual findings will be afforded unnecessarily great deference by arbitrators who will be aware of the district court's role in appointing the Hearing Officer and in overseeing the disciplinary process.

Since the Order is of indefinite duration, it also deprives the Union of its right under state law to negotiate proposed changes to the disciplinary process in successor collective agreement. In Connecticut, once a bargaining unit of municipal employees has been established and its representative certified, a collective bargaining agreement is established or changed only by agreement between the Union and the employer or, in the event of impasse, through statutory interest arbitration proceedings. Conn. Gen. Stat. § 7-473c (Pet.App. 185a). Strikes by municipal employees are prohibited by statute and interest arbitration is intended as a substitute. Conn. Gen. Stat. § 7-475 (Pet. App. 187a); *Carofano v. City of Bridgeport*, 196 Conn. 623 (1985). The statutory framework provides that in the event of bargaining impasse, a tripartite panel of arbitrators decides the terms of the new collective bargaining agreement after receiving evidence and argument from the municipal employer and the union representing the employees. See Conn. Gen. Stat. 7-473c (Pet. App. 186a). *I.B.P.O. v. Jewett City*, 234 Conn. 123, 131-132 (1999).

The Union's concerns with respect to the impact of the substitution of a court-appointed "Hearing Officer" on the Union's statutory right to interest arbitration are three-fold. First, the change is being imposed over the Union's objection

by entities who need not observe the statutory criteria[6] applicable at interest arbitration. Second, the very mechanism being used to impose the change, a federal court order/Stipulation, deprives the Union of its statutory right to negotiate and/or arbitrate this topic for the indefinite future. Third, this change will prejudice[7] the Union's ability to preserve the right it presently enjoys to challenge the imposition of discipline before an independent arbitrator.

The Second Circuit stated, without explanation, that the "substitution imposes no substantial burden on the Union; indeed, some aspects of the hearing officer procedure required by the Stipulation are more protective of police officers' rights than the current procedures of the Board". Pet. App 18a. This reasoning is flawed because it fails to recognize that the Union, given its role as collective bargaining adversary, has both the incentive and experience to assess what will best protect its members' rights. The Order, by its very existence, denies the Union this traditional role and precludes Union proposals on this topic in future negotiations that would otherwise address unforeseen events such as new employer practices and procedural rulings by grievance arbitrators.

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[6] See, Conn. Gen. Stat. 7-473c(d) (9) at page____of this petition.

[7] The Union predicts that upon the expiration of some future collective bargaining agreement the City will propose eliminating the Union's right to challenge discipline decisions of grievance arbitration (e.g. Art. 6 § 7) (Pet.App. 169a) on the grounds that the court-appointed "Hearing Officer" is a valid substitute. While the "Hearing Officer" is not independent because he/she is actually making the discipline decision, the Union predicts that because the "Hearing Officer" is cloaked with the mantel of the federal court, an interest arbitration panel will award such a proposal by the City.

In *Eastern Associated Coal Corp. v. United Mine Workers*, ___U.S.___, 121 S. Ct 462, 468 (2000), this Court recently acknowledged "basic background labor law principles, which caution against interference with labor-management agreements about employee discipline" and cited *California Brewers Assn's* v. *Bryant*, 444 U.S. 598 (1980) in which this Court stated:

> ...Congress passed the Civil Rights Act of 1964 against the backdrop of this Nation's longstanding labor policy of leaving to the chosen representatives of employers and employees the freedom through collective bargaining to establish conditions of employment applicable to a particular business or industrial environment. See generally Steelworkers v. Weber, 443 U.S. 193. It does not behoove a court to second-guess either that process or its products. Porter Co. v. NLRB, 397 U.S. 99.

444 U.S. at 608.

Nor is this a case such as *Lawyer v. Department of Justice*, 521U.S. 567 (1997) where this Court held that the consent order disposed of an objecting party's "claim not in the forbidden sense of cutting him off from a remedy to which he was entitled, but only in the legitimate sense of granting him an element of the very relief he had sought". 521 U.S. at 579. The Union did not seek these changes for good reason, the changes will ultimately insulate the City's discipline decisions from independent arbitral review.

The consent order also impermissibly imposes obligations upon the Union without its consent. Under the collective bargaining agreement and past practice, there was

no obligation to offer evidence that "proposed discipline is disparate" or "unfair for any reason" yet under the Stipulation this obligation exists.[8] Pet.App. 45a. If the Union seeks to settle a grievance concerning alleged unfair imposition of discipline, the Stipulation requires the Union to obtain prior approval of the settlement by the Hearing Officer.[9] Pet.App. 47a. A. at 548. These are new obligations imposed by the Stipulation and the Order upon the Union and presumably are enforceable by those means available to the district court, including its contempt powers.

This Court has held that an employer cannot use a Title VII settlement agreement to nullify or alter the provisions of a collective bargaining agreement without the Union's consent. *W.R. Grace & Co. v. Rubber Workers*, 461 U.S. 757, 771 (1983) (Citing *Alexander v. Gardner - Denver Co.*, 415 U.S. 36, 44 (1974)). A "judicial determination" is required. Id. In so holding this Court reasoned that while Title VII voluntary compliance is an important public policy, so is a party's reasonable assurance that its collective bargaining agreement will be honored. *W.R. Grace v. Rubber Workers*, 461 U.S. at 771 (citing, *Charles Dowd Box Co. v. Courtney*, 368 U.S. 502, 509 (1962)).

In *W.R. Grace v. Rubber Workers*, supra, an arbitration award was enforced even though it was based on a provision in a collective bargaining agreement that conflicted with a conciliation agreement the employer had

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[8] The Union expects that the City will attempt to use this provision at grievance arbitration to exclude evidence that was not previously offered regardless of the reason.

[9] The Union believes that this provision will make settlements of grievances contesting discipline issued by the Hearing Officer highly unlikely. Why would a Hearing Officer approve a compromise of his own disciplinary decision?

entered into with the Equal Employment Opportunity Commission. This Court stated:

> "Although the ability to abrogate unilaterally the provisions of a collective-bargaining agreement might encourage an employer to conciliate with the Commission, the employer's added incentive to conciliate would be paid for with the union's contractual rights.
>
> Aside from the legality of conferring such power on the Commission and an employer, it would be unlikely to further true conciliation between all interests parties. Although an innocent union might decide to join in Title VII conciliation efforts in order to protect its contractual position, neither the employer nor the Commission would have any incentive to make concessions to the union. The Commission and the employer would know that they could agree without the union's consent and that their agreement would be enforced.
>
> In fact, enforcing the award here should encourage conciliation and true voluntary compliance with federal employment discrimination law. If, as in this case, only the employer faces Title VII liability, the union may enter the conciliation process with the hope of obtaining concessions in exchange for helping the employer avoid a Title VII suit. ... On this view, the conciliation process of Title VII and the collective-bargaining process complement each other, rather than conflict."

W.R. Grace & Co. v. Rubber Workers, 461 U.S. at 771-772.

Petitioner, like the labor organization in *W.R. Grace & Co. v. Rubber Workers* was also innocent of Title VII liability and declined to participate in continued settlement discussions between the employer and the Title VII claimant. At the very outset of these discussions, the Union was made aware that the changes to the disciplinary procedure had already been negotiated between the City and the Guardians and would be implemented through the district court with or without the Union's consent. In order to establish whether there was any hope of obtaining concessions in return for helping the City avoid further proceedings in the district court, the Union asked the City if it would submit to statutory interest arbitration[10] and the City stated it would not.

The Second Circuit ignored the effects of the Order upon the Union's contractual right to challenge the City's discipline decisions at grievance arbitration and the Union's statutory right to raise proposed changes to the discipline procedure at interest arbitration. This disinclination to address the impact of the Order on the Union's right to arbitrate is consistent with centuries of judicial hostility to arbitration agreements which American courts adopted as part of the common law. See, *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 510 n.4 (1974). Indeed, the purpose of the Federal Arbitration Act was to reverse the longstanding judicial hostility to arbitration agreements. *Green Tree Financial Corp-Alabama v. Randolph*, 531 U.S.____, 121 S. CT. 513,

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[10] It is crucial that this Court recognize that collective bargaining leverage for municipal employees in Connecticut is based solely on statutory interest arbitration because strikes are prohibited. See Conn. Gen. Stat. § 7-475, (Pet App 186a). In short, a refusal to submit to such arbitration is a refusal to engage in collective bargaining. The Second Circuit erroneously believed that the right to interest arbitration arose from the collective bargaining agreement rather than state law. See Pet. App. 11a.

521 (2000) (quoting, *Gilmar v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 24 (1991)). Nor is the Second Circuit's failure to protect the Union's arbitration rights justified by the public sector status of the Union's membership. "Public employees are not basically different from private employees; on the whole, they have the same sort of skills, the same needs, and seek the same advantages". *Abood v. Detroit Board of Education*, 431 U.S. 209 229-230 (1977). The Union is not aware of any decision by this Court which holds that the collective bargaining rights of municipal employees are inherently less than those enjoyed by private employees merely because such rights arise under state law.

The Court's holding in *W.R. Grace v. Rubber Workers* and *Firefighters v. Cleveland* does not allow an employer to pay for a settlement of its Title VII liability with the rights of a union, particularly where the union itself is innocent of wrongdoing. Yet this precisely what happened here. The Union had a contractual right[11] to a particular disciplinary procedure, aspects of which had been existence for over a century, as well as a statutory right under state law to bargain concerning this procedure.[12] Through the Stipulation, the

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[11] In the event a municipal charter provision conflicts with a provision of a municipal collective bargaining agreement, state law dictates that the collective bargaining agreement controls. Conn. Gen. Stat. § 7-474(f). (Pet. App. 187a). As such, the Union's rights concerning the disciplinary process arose from the collective bargaining agreement, not the City's Charter.

[12] There is no question that the circumstances for terminating employment and the imposition of discipline constitute a bargainable "conditions of employment" subject to the duty to negotiate. *Fibreboard Paper Products Corp., v. National Labor Relations Board*, 379 U.S. 203 (1964) (Stewart, Jr. concurring); *Board of Police Commissioners v. White*, 171 Conn. 553, 559-560

respondent City agreed to indefinitely suspend these rights and in return the City received a waiver of its Title VII liability that was pending in the form of contempt sanctions, a suspension of its police chief, and further proceedings before the Special Master in the Joe Ann Simmons matter. See Pet. App. 40a.

The Settlement embodied in the Stipulation cost the City no consideration of its own and, in fact, affords the City an advantageous position as to the Union. The Union's primary role in disciplinary matters is enforcing the contractual provision that requires the imposition of discipline to be based on "just cause". (Art 6 § 1, Pet. App. 165). Ultimately, enforcement hinges on the Union's ability to challenge the imposition of discipline at arbitration. This ability will be nonexistent[13] or at least substantially curtailed where the City agent imposing the discipline is also an appointee of the district court and in all likelihood a fellow arbitrator.[14] The Stipulation affords the City an advantage in its dealings with the Union to the extent that it deprives the Union of independent de novo arbitral review of discipline decisions, a crucial right the Union previously enjoyed.

(1976).

Due to the similarity between federal labor statutes and Connecticut's labor statutes, federal interpretations are deemed "particularly pertinent". *Emhart Industries v. Amalgamated Local 376*, 190 Conn. 371, 392 n. 12 (1983).

[13] Review will, as a practical matter, be nonexistent if the arbitrator views the Hearing Officer as not only an agent of the City but as an agent of the district court.

[14] The district court has recently appointed a number of Hearing Officers and most are current or former arbitrators.

II. Certiorari Is Warranted Because The Remedial Powers of Federal Courts Do Not Include The Unnecessary Imposition Of Injunctive Relief Against An Innocent Party

The Second Circuit agreed with the district court's characterization of the March 24, 2000 Order as being a mere modification of the 1983 Remedy Order rather than a consent decree. Pet. App. 14a-15a. This characterization does not comport with the reality that the remedy in the Order was negotiated by and between respondents at mediation and "APPROVED and ADOPTED" verbatim by the district court. See Pet.App. 27a. This characterization is, however, consistent with a refusal to recognize that the district court, in ratifying the Stipulation, improperly disposed of Union's claims in violation of this Court's holding in *Firefighters v. Cleveland*, supra.

The Second Circuit violated this Court's past holdings, however, even if the district court's Order is viewed as a modification of the Remedy Order entered in 1984. This Court held in *W.R. Grace & Co. v. Rubber Workers*, that a "judicial determination" is required before a district court can alter the collective bargaining agreement without the Union's consent. 461 U.S. at 771. Furthermore, this Court has also held that an innocent party can only be subjected to such "minor and an ancillary provisions" of the Title VII injunctive order as are necessary to grant relief from discrimination. *General Building Contractors Ass'n v. Pennsylvania*, 458 U. S. 375, 399 (1982).

Given these holdings the Second Circuit erred in three (3) basic respects. First, petitioner was innocent of wrongdoing yet its collective bargaining rights under state law and the existing contract were not the subject of minor and ancillary provisions of the Order but rather were the the

primary focus of the district court's remedial action. Petitioner's collective bargaining agreements and the past practices under those agreements established the framework for the disciplinary process and this process was the primary focus of the court's remedial actions.

The Second Circuit relied improperly (Pet.App. 16a-17a) on dicta in *General Building Contractors Ass'n v. Pennsylvania*, 458 U.S. 375 (1982) in which this Court stated that it was "entirely appropriate" for a district court's Title VII remedy to include "adjustment in the collective bargaining contract" even though one party to that contract was innocent of wrongdoing under Title VII. Id. at 400-401. The statement relied on by the Second Circuit was dicta because the burdens imposed on the innocent petitioners by the remedial action in that case did not concern the petitioners' rights under the collective bargaining agreement. In short, there was no claim by the innocent petitioners that their collectively bargained rights were at stake. This is not surprising because the petitioners in that case were employers, not labor unions.

Remedial alteration of a collective bargaining agreement in a situation where the union violated Title VII would not ordinarily prejudice an innocent employer because a collective bargaining agreement only exists to limit and define an employer's preexisting power. This Court has long recognized that, absent collective bargaining, individual employees work at-will and are helpless before employers who are free to simply dictate terms and conditions of employment. See, *NLRB v. Jones and Laughlin Steel Corp.*, 301 U.S. 1, 33 (1937); *American Steel Foundaries v. Tri-City Central Trade Council*, 257 U.S. 184, 209 (1921). The reverse situation (innocent Union and Title VII liable employer) is wholly different because collective bargaining agreements create rather than limit employee rights to certain terms and conditions of employment. This Court's language

in *General Building Contractors Ass'n v. Pennsylvania* inviting changes to the collective bargaining agreement where necessary to afford full relief is readily explained by the context of that case in which it was unlikely that the innocent party would be burdened by such changes.

Second, the changes imposed were not necessary to afford relief. The Union's collective bargaining rights were compromised by a Title VII remedy which affords no restitutionary or "make whole" relief whatsoever. An examination of this Court's past cases in this area reveals a preeminent concern with preserving the ability to afford such relief. See, *Flight Attendants v. Zipes*, 455 U.S. 385 (1982) (union objection to competitive seniority afforded gender discrimination complainants overruled); *Firefighters v. Cleveland*, 478 U.S. 501 (1986) (union objection to consent decree establishing affirmative action in promotions overruled); *Teamsters v. United States*, 431 U.S. 324 (1977)). (union objection to award of retroactive seniority overruled). This is not a situation where the district court was faced with the difficult problem of recreating the conditions and relationship that would have existed but for unlawful discrimination.

The Second Circuit expressly recognized in its opinion that the district court's action was not based on any current finding of discrimination by the Police Commission (Pet. App. 14a). but stated that the substitution of court-appointed hearing officers is "an entirely appropriate response to the combination of the Board's backlog and its persistent failure to submit reports" to the Special Master. Pet. App. 18a-19a. Relief is not necessary under Title VII to address an employer's delay in administering discipline unless such delay improperly favors one group of employees. While the Special

Master did make such a finding[15] in 1991 (Pet. App. 96a), there was no finding that the Police Commission has since engaged in such practices. The substitution was not necessary to address the Commission's failure to submit reports because the district court had not attempted to compel reporting through any other means. The Police Commission's clerical functions are ordinarily performed by City employees and/or City attorneys and if reports were not properly compiled it was because the City, not a group of unpaid citizen volunteers, did not perform the task.

The Order was unnecessary under its own terms because it expressly does not include disciplinary proceedings before the Police Commission which arise from citizen complaints of police misconduct. Pet. App. 40a. The primary change effected by the Stipulation, substitution of the Police Commission with Hearing Officers, only impacts disciplinary proceedings commenced by the police chief.[16] How can the substitution be necessary if the order expressly contemplates that the Police Commission will continue to conduct discipline cases?

The Second Circuit wholly failed to address the Union's claim that the district court's Order unnecessarily

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[15] The district court refused the Union's proffer that the 1991 finding was readily explained by officer requests for hearing continuances.

[16] Under the Stipulation, the Police Commission continues to conduct disciplinary proceedings commenced by citizen complaint. Pet. App. 40a. Such complaints are, pursuant to a consent decree (e.g. the "Barros Decree") entered in 1973 in another district court case, investigated and, in the event the investigation reveals misconduct or at the complainant's request, heard by the Police Commission as a regular disciplinary proceeding. Pet.App. 171a, 178a.

imposed an indefinite suspension upon the Union's right under state law to negotiate a mandatory topic of collective bargaining. See Conn. Gen. Stat. § 7-468(c) (Pet. App. 183a-184a).

Its reliance on 42 U.S.C. § 2000e-7 reveals a construction of that statute that conflicts with this Court's construction in *California Federal Savings & Loan v. Guerra*, 479 U.S. 272 (1987). This Court read that statute as indicative of congressional intent to severely limit Title VII's preemptive effect on state fair employment laws to instances where such state laws actually conflicted with federal law. 479 U.S. at 281. See also *Lingle v. Norge Division*, 486 U.S. 399, 412 (1988) (§ 2000e-7 is endorsement of state anti-discrimination laws). Yet both the Second Circuit and the district court would rely on the "which purports to require or permit" language of the statute as license to "override" petitioner's collective bargaining rights. See Pet. App. at 15a-16a; 25a.

Petitioner Union's right under state law to negotiate and enforce a collective bargaining agreement does not "require or permit" employment practices illegal under Title VII just as the 1883 legislation establishing the Police Commission does not permit or require the City to engage in such practices. If the Union or the City were to engage in employment practices in violation of Title VII and attempt to defend such activity with findings made under Connecticut's fair employment statutes, then 42 U.S.C. § 2000e-7 would come into play. The statute does not, however, serve as license to ignore a party's rights under state law when fashioning a Title VII remedy.

Third, the "judicial determination" required under *W.R. Grace v. Rubber Workers*, supra, was inherently defective because the district court relied on findings which arose out of a continuing improper reference to a Special Master which the district court refused to allow the Union to

contest[17] even though the Union was not a party to those prior proceedings. The core dispute resolved by respondents through their Stipulation concerned the Special Master's findings and recommendations in the Joe Ann Simmons matter, a Title VII claim the Master "[r]eceive[d], investigate[d], and remed[ied]" (Pet. App. 120a-121a) pursuant to paragraph 10(b) of the 1983 Remedy Order even though it arose from an event occurring in 1990. The Special Master's findings in the Joe Ann Simmons matter were, by agreement of the respondents and with approval of the district court, construed as probable cause "charges" of misconduct and submitted to the Police Commission as part of the regular disciplinary procedure. Pet.App. 59a, 49a.

A crisis occurred after the Police Commission conducted disciplinary proceedings and dared to differ with the Special Master's factual findings by exonerating the charged supervisors. The district court found the City in contempt and the City took appeals to the Second Circuit challenging under U.S. Const. Art. III the Master's continuing authority to adjudicate wholly new Title VII claims. The Stipulation resolved this crisis but the district court, in adopting the Stipulation as a court order, improperly relied on the by-products of this continuing overbroad reference in two distinct ways.

First, the district court, articulated "the continued unabated flow of complaints under the [1983] Remedy Order"

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[17] For example, the district court refused to allow the Union an opportunity to contest the Special Master's 1991 finding that the Police Commission heard discipline cases involving minority officers more quickly than those involving white officers despite the Union's proffer that the finding was readily explained by officer requests for continuances. Nevertheless, the district court and the Second Circuit relied on this finding as justification for the remedial action. Pet. App. 6a-21a.

as grounds for its Order. Pet.App. 21a-22a. The district court had suggested to respondents at the outset of their settlement discussions that it was the "continued flow of complaints" that the court sought to address, regardless of "[w]hether or not the complaints are eventually held to have merit". Pet.App. 39a. Second, the district court's reference to the actions of the Police Commission in the Joe Ann Simmons matter reveals that the court is removing the Police Commission's disciplinary function because the Commission dared to make factual findings different than those of the Special Master. Pet.App. 21a.

In 1983, after trial of the underlying lawsuit in this case, the district court issued a Remedy Order which improperly created a unique adjudicatory system whereby certain[18] employees at the Bridgeport Police Department are allowed to prosecute any and all employment claims under the auspices of the district court without complying with technical requirements (e.g. service of process, attainment of party status, filing fees, etc.) applicable to discrimination complainants elsewhere. This unique system results from the interaction of two provisions of the Remedy Order; the provision which broadly prohibits all future discrimination and the provision which broadly affords the Special Master the power to receive, investigate, and remedy complaints of such discrimination. Pet. App. 120a-121a. Yet the Special Master is not an Article III judge and the Article III judge who oversees the Special Master is required by Fed. R. Civ. P. 53(e) (2) to adopt his findings of fact unless "clearly erroneous".

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[18] While the Remedy Order does not expressly limit its terms to Guardian members, historically the Guardians control access to the Special Master and the Guardians' attorney is the designated counsel for all complainants.

In *LaBuy v. Howes Leather Co., Inc.* 352 U.S. 249 (1957)the Court held that wherever an order of referral transfers more to a master than the power to implement that which the Article III judge has already determined and decreed, the jurisdiction function has been abdicated. 352 U.S. at 256. In *LaBuy*, the Supreme Court upheld Seventh Circuit's finding that the order of reference was an abuse of Rule 53 because the referral "amounted to little less than an abdication of the judicial function depriving the parties of a trial before the court on the basic issues involved in the litigation." *LaBuy*, 352 U.S. 256. The review by the district court of the Special Master's recommended rulings does not solve the basic problem inherent in the unique judicial microcosm that has existed since the 1983 Remedy Order. A reservation of the power of review, even de novo review, does not necessarily save an improper reference to a master. *United States v. Miscrosoft Corp.*, 147 F3d 935, 954-55 (D.C. Cir. 1998). "[E]ven the temporary subjection of a party to a Potemkin jurisdiction so mocks the party's rights as to render end-of-the-line correction inadequate." *Microsoft*, 147 F.3d at 954.

The Special Master's continuing role is at issue because the core dispute resolved by the Stipulation concerned contempt findings issued after the Police Commission concluded, contrary to the Master's findings, that certain respondent supervisors did nothing wrong. The Special Master's continuing role is also important to this petition because the district court reasons in the Order that the changes set forth in the Stipulation will "serve[] the desirable objective of potentially decreasing and eventually eliminating the Special Master's and Court's role in insuring a discrimination-free workplace for all Bridgeport Police Officers." This reasoning is fundamentally flawed for several reasons.

The modified disciplinary procedure will not reduce the Special Master's role because the Stipulation expressly

states that it does not "affect the rights of any respondent officer to resort to the Special Master...for the review or appeal of the final decision of the Hearing Officer or the Chief..." Pet.App. 47a. In addition, the Stipulation expressly identifies the Special Master as an entity involved in the modified disciplinary procedure and said procedure is of an unlimited duration. Pet.App. 43a, 45a, 47a.

Equally important is the fact that access to the Special Master will continue[19] to serve as an additional means for members of the Guardians to challenge discipline. The simple reality is that because such access is not impeded by the hurdles an ordinary[20] Title VII claimant faces, discrimination complaints to the Special Master contesting the imposition of discipline will continue and such complaints will either be settled or litigated.

In fact, complaints to the Special Master will continue because the district court has expressly indicated that the court is more concerned with the continued flow of complaints than it is with the merit of those complaints:

> ...The problem is going to be that the continued flow of complaints is indicative of something wrong. Whether or not the complaints are eventually held to have merit is

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[19] Upon issuance of the Remedy Order in 1983, minority officers routinely challenged discipline in two (2) forums concurrently; by filing a grievance under Article 6 § 7 of the grievance/arbitration procedure in the collective bargaining agreement (A. at 690) and filing a discrimination complaint with the Special Master under 10(b) of the 1983 Remedy Order.

[20] A Guardian member need only observe the relatively informal parameters set forth in the Special Master's Recommended Procedure for Resort to the Special Master. See Pet.App 109a.

> not the relevant point. They are still coming....

Pet. App. 39a.[21] The Guardians will continue to file complaints with the Special Master because this continued access guarantees the Guardians' status as a viable rival[22] (as to the Union) labor organization.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

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[21] The City and the Guardians considered this statement by the district court sufficiently important to quote verbatim in the Stipulation which is the subject of this petition. Pet. App. 39a.

[22] Although minority complainants could raise their claims of discrimination through the Union by means of the grievance-arbitration procedure (Art. 7) and the non-discrimination provision (Art. 38) of the collective bargaining agreement, this rarely occurs given the availability of the Special Master. Under *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974), this Court held that a Title VII claimant was not required to arbitrate his claim under the collective bargaining agreement because the Union could not waive the employee's statutory rights. c.f. *Wright v. Universal Maritime SVC Corp.*, 525 U.S. 70 (1998). (holding collective bargaining agreement not "clear and unmistakable" waiver of right to sue under Americans with Disabilities Act).

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term 2000

Argued: January 18, 2001 Decided: April 26, 2001

Docket Nos. 00-7456L, -7552XAP

BRIDGEPORT GUARDIANS, INC., ET AL.,
Plaintiffs-Appellees,

v.

ARTHUR J. DELMONTE, ET AL.,
Defendants,
CITY OF BRIDGEPORT,
Defendant-Appellee,
AFSCME, COUNCIL #15, LOCAL 1159,
AFL-CIO, HISPANIC SOCIETY-BRIDGEPORT
POLICE DEPARTMENT, INC.,
Intervenors-Appellants.

Before: NEWMAN, LEVAL, and SACK, Circuit Judges.

JON O. NEWMAN, Circuit Judge.

This appeal concerns the scope of a district court's authority to approve a stipulation entered as a remedial order in protracted litigation involving claims of racial discrimination in police disciplinary proceedings. The stipulation, agreed to by the City of Bridgeport and the Bridgeport Guardians ("Guardians"), an organization of Black police officers, shifts authority for police discipline in cases initiated by police officers (or other department personnel) away from the City's Board of Police Commissioners and vests such authority in court-appointed hearing officers. The Bridgeport Police Union, AFSCME, Council #15, Local 1159, AFL-CIO ("Union") and the Hispanic Society-Bridgeport Police Department, Inc. ("Hispanic Society"), an association of Hispanic police officers, intervenors in the litigation, appeal from the March 27, 2000, order of the United States District Court for the District of Connecticut (Janet Bond Arterton, District Judge) approving the stipulation. They contend that the stipulation is not a remedy for discrimination and impermissibly violates state law and the Union's collective bargaining agreement. We conclude that the District Court was entitled to approve the stipulation, and we therefore affirm.

Background

I. The Original Remedy Order

This lawsuit began in 1978 when the Bridgeport Guardians filed suit under Title VII (employment discrimination) and Title VI discrimination in federal assisted programs) of the Civil Rights Act of 1964, 42 U.S.C. § 2000e

et seq., §§ 2000d et seq., against the City of Bridgeport and the Bridgeport Police Commissioners, alleging racial discrimination in the Bridgeport Police Department ("BPD"). In 1982, after a bench trial, the District Court (T.F. Gilroy Daly, District Judge) found retaliation and discrimination in assignment, working conditions, and, significantly, the disciplinary process. With respect to the latter, the Court found:

> [I]f you are black and a member of the [Bridgeport Police Department], you are very likely to be punished -- even fired -- for conduct which might very well be ignored if you were white, or that you will be punished far more severely than you would be if you were white. The clear inference to be drawn from the cited examples, as well as from the statistics indicating that a far greater percentage of black officers than white officers have been subjected to disciplinary proceedings, is that defendants intentionally discriminate on the basis of race in the amount and kind of discipline meted out to its officers.

Bridgeport Guardians, Inc. v. Delmonte, 553 F. Supp. 601, 614 (D. Conn. 1982). Some weeks after issuing this ruling, in early 1983, the Court ordered its remedy ("the 1983 Remedy Order"). The 1983 Remedy Order provided for the appointment of a Special Master to review disciplinary actions undertaken by the BPD. The Special Master was ordered to:

> a) Review any and all disciplinary actions instituted against any black officer who claims

> such action is racially discriminatory in purpose or effect; and to recommend an appropriate adjustment in any such action found to be racially discriminatory as to initiation, severity of sanction or otherwise.
>
> b) Receive, investigate, and remedy all complaints of discriminatory treatment, racial harassment or slurs within the B.P.D. and, in appropriate cases, to bring disciplinary charges against those responsible and/or those supervisors who foster or permit such racial harassment to occur in violation of departmental rules.
>
> c) Review any disqualification of any black officer seeking promotion which disqualification is based on grounds of any suspension, disciplinary action, or alleged misconduct upon which such sanction was premised occurring from 1978 to the date of this Order.

Id. at 619-620. The Order further provided that the Master's rulings were subject to review by the District Court, under the clearly erroneous standard. Id. at 620. Atty. William H. Clendenen, Jr., of New Haven, was appointed Special Master, a position he still holds.

II. The Grievance Procedure and the Collective Bargaining Agreement

In Bridgeport, police disciplinary matters have been adjudicated by the City's Board of Police Commissioners ("the Board"). State law gives the Board "sole power" to suspend or remove officers. See 1883 Conn. Spec. Acts 144. Under the City's Charter, the members of the Board are appointed by the Mayor, with the approval of the City Council. See Charter of the City of Bridgeport ("Charter"), Chapter 13, § 2(a) (1992). The Charter provides that the Board "shall be responsible for [s]uch other duties as may be assigned to it by law, this charter, the ordinances of the City of Bridgeport, collective bargaining agreements and court orders." Id. § 3(a) (6).

The City has a collective bargaining agreement ("CBA") with the Union. Under the CBA, the Police Chief is authorized to impose discipline of up to fifteen days' suspension without pay. See CBA, Art. 6, § 2. For discipline of greater severity, the CBA provides that "[d]isciplinary hearings shall be conducted by the Board of Police Commissioners," or a subcommittee of the Board. See id. § 3. The CBA also permits the Union to submit any disciplinary decision to arbitration. See id. Art. 6, § 7.

In 1984, the Special Master devised a procedure for filing complaints of discriminatory discipline directly with him, rather than through the statutory process contemplated by Title VII. By May 1999, the Special Master had issued 24 adjudications, 10 in favor of the City, and 14 in favor of the Guardians. In at least one instance, the Special Master ordered discipline of particular officers, bypassing not only Title VII procedures but also the procedure outlined in the CBA. The Union objected to the Special Master's assertion

of authority to impose discipline directly, but Judge Daly approved the Master's recommendation.[1]

IV. Events Leading Up to the Stipulation

In 1990, the Special Master made a recommended ruling upon finding that the Board of Police Commissioners had not promptly disciplined officers, and that minority officers were brought before the Board more frequently and more expeditiously than similarly situated White officers. Whites were allowed to continue working for months while their cases were ignored by the Board; the cases of Black officers were brought up immediately. The Special Master ordered the Board to file within 30 days a plan to eliminate its backlog of cases, and to submit reports of its activities. The District Court overruled objections to the recommended ruling, and the City filed a notice of appeal.

Before the appeal was heard, however, the City and the Union agreed to streamline the disciplinary process,

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[1] The Union objected before the District Court a second time when in 1997 the Guardians filed a complaint with the Special Master, seeking to have him determine whether the City had breached the 1983 Remedy Order by using random selection to establish seniority within the Police Academy Class of 1991-1992. The Union, the Guardians, and the City entered into a stipulation, ratified by the Special Master and the District Court, referring the matter to the State Board of Mediation and Arbitration, to determine whether the random selection policy violated the CBA. Significantly, the stipulation provided that the Special Master could recommend enjoining compliance with any arbitral award if he found that compliance would violate the 1983 Remedy Order.

requiring the Board to hear cases within sixty days of filing. The Special Master then dropped his requirement that the Board file a plan to reduce the backlog, since he expected the reform negotiated by the City and the Union "to resolve most, if not all, of the previously identified issues concerning discipline," and also to ensure that no case remain pending more than three months. The City then withdrew its appeal.

On August 2, 1999, the Special Master, concerned that closer monitoring of the Board was necessary "to insure that the Board executes its disciplinary function in an efficient, fair and evenhanded manner," recommended to the District Court (a) that the required reports from the Board be filed in "strict compliance" with report deadlines (which he lengthened from monthly to quarterly), (b) that the reports conform to a newly prescribed form, and (c) that the Court hold further hearings to "consider what if any additional remedy should be imposed." His recommended ruling noted that "several reports were prepared and filed years late, after many requests from the Special Master."

During the decade of the Special Master's increasing concern with the Board's inadequate handling of disciplinary cases, one matter became a focus of particular attention. In 1990, Joe Ann Simmons,[2] a Black police officer, complained of discriminatory treatment by her supervisor James Halpin. The Special Master recommended, and the Court approved, an order prohibiting Halpin from supervising Simmons. A subsequent recommendation, also approved by the Court, ordered the BPD to defer Halpin's promotion to sergeant,

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[2] Thus spelled in papers she filed.

pending further evaluations to be submitted to the Special Master.

Simmons complained four years later, in 1995, that she had been scheduled to work under Halpin. At a hearing, the BPD admitted that it had made a mistake, and promised to make changes to prevent a recurrence. In the course of protracted consideration of her renewed complaint, the Special Master stated, "For too long, the Court has dealt leniently with members of the Department who have violated orders of the Court and Departmental Rules and Regulations. . . . The time is long over for the Court to tolerate any additional violations of its orders."

On October 31, 1997, after considering objections to his previously recommended rulings and holding hearings, the Special Master issued a final recommended ruling, finding that the Police Chief and five officers knew or should have known that Halpin was not to supervise Simmons, and failed to prevent Simmons' assignment under Halpin in 1995. This ruling proposed that the Chief subject all five individuals to the Department's disciplinary process; it also left intact prior recommendations for a $10,000 payment to the Guardians and suspension of the Chief for three days. After much delay, in February 1999, the Board of Police Commissioners exonerated the Chief and all five officers, including Halpin.

In April 1999, Judge Arterton, who had taken over the case after Judge Daly's death, heard the City's outstanding objections to the Special Master's proposals in the Simmons case and indicated that she would issue a written ruling partially approving his recommendations. The hearing ended with Judge Arterton encouraging the parties to enter

mediation on the Simmons issue. "Do you contemplate that the Simmons/Halpin matter or any portion of it would be amenable to settlement?" After receiving a pessimistic assessment from the Guardians' lawyer and a positive assessment from the City's lawyer, Judge Arterton began asking about a broader mediation: "How do we move ahead to accomplishing the objectives of the [1983] remedy order from the larger standpoint?" This time, both lawyers responded positively, with the Guardians' lawyer emphasizing that "what needs to be resolved [is] the underlying problem," i.e., "a very deeply ingrained difficulty with racial attitudes in the department." To this Judge Arterton responded:

> To the extent that this [Simmons issue] is a lightning rod, [or] any of those issues [are], the problem is going to be that the continued flow of complaints is indicative of something wrong. Whether or not the complaints are eventually held to have merit is not the relevant point. They are still coming. And so we all would agree, I'm sure, that an institutional change from within [has] the highest likelihood of making permanent and successful change rather than having to be imposed by court order.
>
> As I listen to you I see that perhaps we have come to that point where that ought to be explored. So, let me, in keeping with that spirit, ask you to begin doing, thinking[,] exploring how the larger picture of what you called the swirling morass can be dealt with. This is not an easy project to contemplate, but

> it does strike me that there is a real timeliness to it.

Judge Arterton issued her written ruling on the Simmons matter a few weeks later. She declined to order the recommended $10,000 payment, but remanded the case to the Special Master to determine whether any lesser sanctions were necessary to ensure compliance with the Court's future orders, and to compensate the Guardians for the expense of litigating the Simmons matter. With respect to the Chief's three-day suspension and the exoneration of the other officers, Judge Arterton ordered further proceedings before the Special Master to determine the appropriateness of the Board's exonerations of the officers involved. The Court also prohibited any permanent promotions of the officers involved. Finally, Judge Arterton said that she would convene a hearing to review the Special Master's findings with respect to contempt sanctions and discipline.

The City filed a notice of appeal with respect to Judge Arterton's decision. A few months later, the Special Master issued his August 2, 1999, recommendation, which required the Board to make renewed efforts to eliminate its backlog and to issue prompt and detailed reports. Meanwhile, the City and the Guardians began to engage in mediation before Robert C. Zampano, a former District Judge.

IV. Mediation and the Stipulation

Against the background of the Special Master's increasing concern with the Board's inadequate handling of disciplinary cases, and prompted by Judge Arterton's suggestion at the April 1999 hearing on the Board's refusal to

discipline the officers responsible for the Simmons incident, the City and the Guardians entered mediation. The Union initially participated in mediation, but backed out once the City refused to submit to interest arbitration, as allegedly required by the CBA, over the structural changes in the Board's operation that were being negotiated. In October 1999, the Union filed a complaint with the Connecticut State Board of Labor Relations, alleging a failure to bargain under state law.

The mediation resulted in a stipulation ("the Stipulation"), which the Guardians and the City filed with the District Court in January 2000. The Stipulation included the following specific changes in the BPD's disciplinary procedures for complaints initiated by police officers:[3]

> --replacing the Board with "Hearing Officers" nominated by the mayor, appointed by the District Court (with the Special Master's help), to serve in all serious disciplinary cases except those initiated by citizen's complaint;
>
> --requiring the Hearing Officer to issue written decisions, obliterating certain procedural rules;
>
> --requiring the department to defend its actions with evidence.

---

[3] As a result of a consent decree in Barros v. Walsh, B-482 (D. Conn. 1973), modified, id. (D. Conn. 1985), the Board must continue to hear police misconduct complaints filed by civilians.

The Stipulation also specifies that the Simmons dispute and the attendant proceedings and remedies are moot.

At this point, the Union and the Hispanic Society intervened and were granted party status for the limited purpose of contesting the Stipulation. They objected to the Stipulation on the grounds advanced on this appeal, i.e., that it was beyond the remedial power of the District Court and contrary to state law and the CBA.

The District Court overruled their objections:

> [E]ven though such substitution of the hearing officer for the Board of Police Commissioners as the City's designated agent changes that provision in the collective bargaining contract without union consent, it is axiomatic that operation of the Title VII Remedy Order with the narrow modification proposed by the parties' stipulation, would preempt any contrary state law.

(citations omitted). Judge Arterton also noted that it had been "almost a decade" since the Special Master first noted a deficiency in the disciplinary process,

> and that the Union has never previously sought to intervene or to appear before the Special Master on this issue. The Court is fully satisfied that the necessity for this change is well established by the record of prior proceedings and findings, and observes that there is no indication that the future workload

> pressures on the Board of Police Commissioners will be any less so as to mitigate the current shortcomings in providing prompt, even-handed disciplinary processing.

The District Court "approved and adopted" the Stipulation in a well-reasoned ruling, entered as an Order of the Court on March 24, 2000. The Union and the Hispanic Society timely appealed.

Discussion

I. The Nature of the District Court's Order

Judge Arterton's opinion approving the Stipulation characterized her action as a "remedy order," expressly rejecting the notion that the stipulation was a "consent decree." We understand the Judge to be saying that the authority for her ruling was not merely the original parties' consent, but, in addition, the Court's conclusion, after notice to the Intervenors and an opportunity for them to be heard, that a supplemental remedy was needed to effectuate the original 1983 Remedy Order. Thus the issues are whether Judge Arterton exceeded her discretion by modifying the 1983 Remedy Order, and whether her modification permissibly overrode state law and the CBA.

II. Justification for the Stipulated Modification

The Union argues that Judge Arterton's Order had nothing to do with Title VII, and was instead a freelance reform of the BPD's disciplinary process. In her written ruling, Judge Arterton found that her Order approving the

Stipulation was justified because of the history of discrimination in the disciplinary process, because the Board's "workload pressures" had prevented it from making prompt, "even handed" decisions, and because the same pressures had prevented the Board from making the reports needed to monitor the Board under the 1983 Remedy Order.

Even though Judge Arterton did not explicitly base her remedy order on a new finding of current discrimination, she was not required to do so as a prerequisite to modifying the 1983 Remedy Order. First, it is clear that her decision was only a modification of the 1983 Remedy Order. That Order provided: "This Court shall maintain continuing jurisdiction in this matter to insure complete and continuing compliance with all aspects of this Order." 553 F. Supp. at 620. The 1983 Remedy Order was based on a finding that the disciplinary process treated Blacks and Whites differently, and its open-ended wording directed the Special Master to "remedy all complaints of discriminatory treatment, racial harassment or slurs within the B.P.D." Id. at 619.[4]

Decrees may be modified even in the absence of additional violations or changes in law or fact. See EEOC v. Local 638, Sheet Metal Workers, 753 F.2d 1172, 1185 (2d Cir. 1985) (no additional violations required; District Judge to be "guided by the sound exercise of his equitable

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[4] While it is unusual for jurisdiction to continue to be asserted for as long as it has been in this case, long-term monitoring sometimes occurs in "structural" Title VII cases like this one. See, e.g., EEOC v. Local 638, 81 F.3d 1162, 1168 (2d Cir. 1996) (court-appointed Administrator still on the job even as "case approaches its twenty-fifth birthday").

discretion"), aff'd, 478 U.S. 421 (1986)). The Stipulation would probably have been justified as a remedy in 1983 and was fully justified 17 years later after the many years of at least partial non-compliance with the requirements of prompt and fair processing of disciplinary complaints by police officers and of timely reports of compliance. See Association Against Discrimination in Employment v. City of Bridgeport, 710 F.2d 69, 74 (2d Cir. 1983) (structural remedies are "open to improvement when a better understanding of the problem emerges")(internal quotation marks omitted).

III. Overriding State Law

The Union contends that Judge Arterton's order impermissibly overrides the state law provision giving the Board of Police Commissioners "sole power" to suspend police officers. See 1883 Conn. Spec. Acts 144. We disagree. Title VII explicitly relieves employers from any duty to observe a state law "which purports to require or permit" any discriminatory employment practice. 42 U.S.C. § 2000e-7. The 1983 Remedy Order recognized that the BPD's handling of police disciplinary matters was a discriminatory employment practice, and the experience of recent years has indicated that the vesting of authority in the Board to discipline officers, including suspension, has continued to "permit" the backlogs that contributed to the discrimination Judge Daly sought to eliminate. We have consistently recognized that, in some circumstances, state law requirements may be displaced in order to effectuate Title VII remedies. See Kirkland v. New York State Dept. of Correctional Services, 711 F.2d 1117, 1132 n.18 (2d Cir. 1983) (remedy in settlement agreement); Guardians Ass'n of New York City Police Department v. Civil Service

Commission, 630 F.2d 79, 10405 (2d Cir. 1980) (remedy in court order).

However, displacement of state law to remedy discrimination is a powerful weapon that must be used with care. As we have previously observed, employment discrimination remedies "should, other things being equal, choose among alternatives the one which is consistent with state law." Chance v. Board of Examiners, 561 F.2d 1079, 1088 (2d Cir. 1977). In Chance, a remedy that appeared to violate state law was rejected because an equally effective alternative was available that conformed to state law requirements.

In the pending case, the Union has proposed no alternative remedy. Moreover, although the displacement of the Board's authority to discipline police officers is a significant structural alteration, it is an entirely appropriate response to the Board's long-standing discriminatory practice of letting complaints about White officers languish while processing expeditiously those against Black officers. Finally, as we discuss in Part V, infra, the displacement of state law is a temporary remedy that may be ended when circumstances indicate that it is no longer necessary.

IV. Overriding the Collective Bargaining Agreement

Like state law, a collective bargaining agreement may be displaced, in some circumstances and to some extent, in order to remedy discrimination. In General Building Contractors Ass'n v. Pennsylvania, 458 U.S. 375 (1982), the Supreme Court considered a discrimination remedy that altered provisions of a collective bargaining contract and

imposed substantial financial burdens on employers and employer associations that were not themselves liable for the violations committed by the Union and a Joint Apprenticeship Training Committee ("JATC"). The Court distinguished between permissibly altering the contract and impermissibly imposing burdens:

> To the extent that the remedy properly imposed upon the Union and the JATC requires any adjustment in the collective-bargaining contract between [the employers] and the Union, it is entirely appropriate for the District Court to fashion its injunctive remedy to so provide, and to have the remedy run against [the employers] as well as the Union and the JATC. But the injunctive decree entered by the District Court as presently drawn treats [the employers] as if they had been properly found liable for the Union's discrimination.

Id. at 400-01. "[A]djust[ing]" the collective bargain contract was "entirely appropriate"; the defect in the remedy identified by the Court was the imposition of substantial burdens on innocent parties, including mandatory expenditures, burdens of the sort imposed on those found liable for discrimination. See id. at 399-400. Evidently the alteration of a bargained-for provision (or the lost opportunity to obtain some other provision that was abandoned when the altered provision was

accepted) was not considered an automatic barrier to an otherwise appropriate discrimination remedy.[5]

In the pending case, the Union has lost its contractually assured right to have police discipline (in cases initiated by police complaints) administered by the Board. That alteration imposes no substantial burden on the Union; indeed, some aspects of the hearing officer procedure required by the Stipulation are more protective of police officers' rights than the current procedures of the Board. Even direct burdens are permissible where "necessary to grant complete relief," provided they are "minor and ancillary," id. at 399 (citing Zipes v. Trans World Airlines, 455 U.S. 385, 399-400 (1982)).

We acknowledge the Union's legitimate concern that a Court's remedial power must not be put to the improper purpose of enabling one party to a collective bargaining contract to circumvent its provisions by agreeing with a Title VII plaintiff to changes that are not reasonably related to ending discriminatory practices. A stipulated remedy for a Title VII violation cannot camouflage an employer's attempt to obtain under court auspices what it could not obtain at the bargaining table. That concern is absent here. The substitution of court-appointed hearing officers for the Board is an entirely appropriate response to the combination of the Board's

---

[5] We do not rule out the possibility that, in some circumstances, the displacement of a provision of a collective bargaining agreement, required to remedy discrimination, could so undermine the legitimate expectations of the parties to the agreement as to justify rescission.

backlog and its persistent failure to submit reports needed to assess whether it has eliminated discriminatory discipline. There is no indication of the City's using the Court's remedial power as a subterfuge to gain arrangements it failed to obtain in collective bargaining.

V. Duration of the Remedy

Neither the Stipulation nor the District Court's Order approving it specifies the duration of the Court's remedy or the circumstances under which the displaced authority of the Board may be fully or partially restored. The absence of such provisions is not some reasonable period of time. Or the Board might at some point gain restoration of its authority by the arrival of new Board members and the adoption of procedures and compliance mechanisms designed to assure, prompt and even-handed dispositions of police-initiated complaints. Our affirmance of the District Court's Order is without prejudice to a well-supported application to that Court, offering sufficient assurance that the Order may be safely modified and, at some point, terminated.

Conclusion

The Order of the District Court is affirmed.

APPENDIX B

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

[Filed: March 24, 2000]

NO. 5:78cv175 (JBA)

THE BRIDGEPORT GUARDIANS	)
	)
v.	)
	)
ARTHUR DELMONTE, et al	)

/

ORDER

In 1978, the plaintiff organization representing minority police officers brought suit under Title VI and VII of the Civil Rights Act of 1964, 42 U.S.C. § 1981 and 1983, and 31 U.S.C. 1242 against the City of Bridgeport and its Police Commissioners alleging unlawful employment discrimination in the Bridgeport Police Department against black and Hispanic police officers. After full trial, in 1983 a comprehensive Remedy Order was entered, providing for, inter alia, a neutral Special Master to review any and all disciplinary actions alleged to be discriminatory in purpose or effect, as well as to review all complaints of discriminatory treatment or racial harassment. Remedy Order (Jan. 7, 1983) at ¶ 10 (Bridgeport Guardians v. Delmonte, 553 F.Supp. 601, 619-20 (D. Conn. 1983). Over the ensuing 17 years, the

Special Master and the Court have been continuously involved in the enforcement and implementation of the Remedy Order and subsequent related orders.

Significantly, in 1990 the defendant Police Commissioners were found to have failed to have afforded timely, evenhanded discipline as ordered and the Court ordered a deadline for elimination of the backlog and periodic backlog status documentation from Defendants. Further report filing requirements were required by order in 1991.

However, in 1999 the Special Master issued findings of repeated non-compliance by the Board with these orders which findings and recommended ruling were referred to the Court. Additionally, in 1997, the Special Master conducted hearings on the complaint of Officer Joanne Simmons (Doc. #802) and found unjustified, repeated non-compliance by the Chief and several officers with a prior court order protecting Officer Simmons, and found unfaithful testimony by one of the officers. To permit the defendant Board of Police Commissioners the opportunity to hear and act on these findings of violation of court order, the results of which would enable the Court to monitor the efficacy and ability of the Board to self-enforce orders entered in this litigation, the Court deemed the Special Master's recommendations to be "charges" against the officers and these charges were referred to the defendant Board for appropriate action. After much delay, the Board of Police Commissioners exonerated all officers of all charges. Raving the Board's action on the charges before it, the Court remanded the record of the Board's proceedings and conclusions to the Special Master for, inter alia, review and recommendation related to the process and basis for the Board's exonerations.

Shortly thereafter, the Court observed to the parties that the continual, unabated flow of complaints under the Remedy Order throughout the years, including the above matters, indicated the pressing need for institutional change and urged the parties to engage in serious mediation to voluntarily effect such change as an alternative to what appeared inevitable further court orders. To their enormous credit, the parties successfully did so, and on January 13, 2000 filed their Stipulation [Doc. #1018] accompanying Notice of Filing [Doc. #1019], containing a new discipline procedure for the Bridgeport Police Department. The critical change was the substitution of the Bridgeport Police Commissioners on disciplinary hearings for cases where discipline could exceed 15 days, with a professional hearing officer chosen from a court-appointed panel of three, who would serve as the City's disciplinary agent and authority. Such hearing officers would be bound to follow specific time lines and procedures, including the requirement of written findings, which would serve as precedential guidelines as well as a record for examining uniformity of disciplinary treatment. Other than substitution for such disciplinary procedure of the hearing officer for the Board of Police Commissioner, the effect of the Stipulation left all other provisions of the Collective Bargaining Agreement in full force and effect.

Notice of the hearing to consider this Stipulation was given to all Bridgeport Police Officers, and the Bridgeport Police Union, AFSCME, Council 15, Local 1159, AFL-CIO ("Union"), see Doc. #1019. Subsequently, the Union and the Hispanic Society were granted limited permissive intervenor party status for the purpose of being heard under Fed. R. Civ. P. 24(b), 42 U.S.C. § 2000e-2(n) (1)(B) (l) and (ii). See

Minute Entry for Jan. 18, 2000 Hrg.; Endorsement Order on Doc. #1029. The hearing on whether to approve and adopt this disciplinary hearing modification was commenced January 18, 2000 and continued until February 4, 2000 to allow the intervenors ample time to file comments or objections. The final submission by the Union was filed on February 9, 2000. See Doc. 91036.

The objections of these two intervening parties may be summarized as follows: a) concern that political influence may affect the new hearing officer process in ways which may be less advantageous to members of the Hispanic Society, and b) that the change may produce an alteration in the labor-management relationship, giving the City a "leg up" on the Union in future dealings. See Docs. #1025, 1027.

More specifically, the Hispanic Society, wary that the Guardians may no longer adequately represent the interests of Hispanic officers, believes its members rights are better safeguarded by the Union and the current disciplinary system. However, its concerns are belied by its own observation to the Court that "[t]he changes in the Bridgeport Police Department discipline procedure attached to the Stipulation would affect all Bridgeport Police officers. The changes are not limited to those officers who are members of the Guardians. The members of the Hispanic Society will inevitably be affected. The membership is concerned." Feb. 4, 2000 Hrg. Tr.. This uniformity of treatment of all Bridgeport Police officers charged with serious disciplinary offenses is precisely the goal of the proposed disciplinary procedure change and necessitated by the demonstrated inability of the Board of Police Commissioners to carry out this objective, whether

because of insurmountable time constraints, Board membership turnover or otherwise.

One important objective of the negotiated change is to eliminate the perception or the reality that any one group is advantaged or disadvantaged by the disciplinary process. This objective is to be accomplished by providing for disciplinary hearings conducted by professional, court-appointed hearing officers, not politically appointed citizen commissioners. Moreover, the transparency guaranteed by the new requirement of written findings will provide guidelines for hearing officers with similar or analogous cases as well as a record for any officer believing him or herself to be disparately treated or impacted by the disciplinary process or outcome. Such a record did not heretofore exist except as a result of hearings held on complaints brought before the Special Master and ultimately the Court. With respect to the intervenors' expressed concern over whether these hearings will be public or closed, the new procedures are silent, and such determination will be left for resolution by affected persons or parties in the first instance.

The Union expresses alarm over its perception of possible future encroachment on the procedures and scope for arbitrations held under the collective bargaining contract resulting from this change, both because of uncertainties about the new entity of "hearing officer" as well as the City's refusal to submit this proposed change to binding interest arbitration. Because the "hearing officer" is specifically denominated as the City's agent or authority, it is difficult to see how such an entity could interfere with the right to proceedings before neutral labor arbitrators and such is not intended to be the effect of this change. Moreover, even

though such substitution of the hearing officer for the Board of Police Commissioners as the City's designated agent changes that provision in the collective bargaining contract without union consent, (see Conn. Gen. Stat. § 7-469 (duty to bargain); Corm Gen. Stat. § 7-473c (requiring interest arbitration)), it is axiomatic that operation of the Title VII Remedy Order with the narrow modification proposed by the parties' stipulation, would preempt any contrary state law. See, e.g., Kirkland v. New York State Dept. of Correctional Servs., 711 F.2d 1117, 1132 n. 18 (2d Cir. 1983) ("Because state law must yield to federal law in Title VII cases, we need not consider whether the settlement agreement violates state law"); Guardians Ass'n of New York City Police Dept., Inc. v. Civil Serv. Comm'n, 630 F.2d 79, 105 ("Title VII explicitly relieves employers from any duty to observe a state hiring provision 'which purports to require or permit' any discriminatory employment practice."); 42 U.S.C. § 2000e-7 ("Nothing in this subchapter shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing, of any act which would be an unlawful employment practice under this subchapter") (emphasis added).

While the Union expresses a desire to challenge the factual basis on which the Court concludes that the inadequacies or shortcomings of the Board of Police Commissioners in administering a reliable disciplinary process require the proposed substitution, the Court notes that it has been almost a decade since the first such finding of deficiency, that all rulings have been required to be posted in the Department, and that the Union has never previously

sought to intervene or to appear before the Special Master on this issue. The Court is fully satisfied that the necessity for this change is well established by the record of prior proceedings and findings, and observes that there is no indication that the future workload pressures on the Board of Police Commissioners will be any less so as to mitigate the current shortcomings in providing prompt, even handed disciplinary processing.

Lastly, the intervenors argue that the Court is required to examine the proposed disciplinary procedure changes by the standard of Fed. R. Civ. P. 60(b)(5) which permits relief from judgment or order if "the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application." Intervenors rely on Rufo v. Inmates of Suffolk County Jail, 502 U.S. 267 (1992) as limiting changes to significant changes in circumstances or unworkability because of unforeseen obstacles or detriment to the public interest. While Rufo was decided in the context of a consent decree, not a remedy order as here, and thus appears inapplicable, such significant changes in factual circumstances and unforseen obstacles have been abundantly demonstrated by the Commissioners' extended inability or refusal to provide adequate status reporting on their disciplinary processing to enable the Court to effectively monitor compliance. It is beyond cavil that the public interest is not served by the existence of internal discord and disorder in a police department resulting from a flawed departmental disciplinary process. Replacement of the current disciplinary procedure with a hearing process conducted by court-approved professional hearing officers issuing written decisions is

narrowly tailored to remedy such circumstances or obstacles. As well, it serves the desirable objective of potentially decreasing and eventually eliminating the Special Master's and Court's role in insuring a discrimination-free workplace for all Bridgeport Police officers.

In summary, the Court finds that this proposed alteration to the existing remedy order is "substantially related to the objective of eliminating the alleged instance[s] of discrimination" and does "not unnecessarily trammel the interests of affected third parties." Kirkland, 711 F.2d at 1132.

Despite the generalized fears and apprehensions of the intervening parties, for the foregoing reasons their objections to approval of the Stipulation and new Disciplinary Procedure [Docs. #1027 and #1025] are OVERRULED and the Stipulation [doc. #1018] is APPROVED and ADOPTED.

Having deferred nominating any hearing officers for the Court's approval pending this order, the City shall submit to the Court the names and background documentation of for initial nominations of hearing officers no later than April 15, 2000. No nomination will be acted on by the Court until April 28, 2000 in order to provide opportunity for any comments and/or objections. Any comment and/or objection must be filed with the Court no later than April 28, 2000.

IT IS SO ORDERED.

/s/_____
Janet Bond Arterton
United States District Judge

Dated at New Haven, Connecticut: March 24, 2000.

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF CONNECTICUT

[Filed: January 13, 2000]

CIVIL ACTION
NO. 5:78CV175 (JBA)

THE BRIDGEPORT GUARDIANS, INC.,)
ET AL.)
Plaintiffs,)
)
v.)
)
ARTHUR DELMONTE, ET AL)
Defendants.)

STIPULATION

We, the undersigned counsel for Plaintiffs, Defendants, and individual Officers, James Halpin, Robert Mangano, Thomas Scanlon, James Honis and Aida Remele, do hereby stipulate and agree as follows, and ask the Court to approve such Stipulation and make it an order within this case:

1. As a result of a Complaint addressed to the Special Master, dated July 25, 1995 (Doc. No. 702), Police

Officer Joanne Simmons challenged certain conduct by the Bridgeport Police Department.

2. Subsequent thereto, Special Master William Clendenen conducted certain investigations and hearings and proposed Recommended Rulings to the Court.

3. Objections were filed with regard to all Recommended Rulings of the Special Master, and on January 18, 1998, this Court referred all issues concerning the conduct of Scanlon, Mangano, Honis, Halpin and Remele (the "Officers") to the Bridgeport Board of Police Commissioners for its investigation and review.

4. As a result of an investigation and hearing before the Bridgeport Board of Police Commissioners, the Officers were exonerated on all charges.

5. Subsequently, this Court, on May 14, 1999, referred the decision of the Bridgeport Board of Police Commissioners to the Special Master for a determination on the procedural and substantive sufficiency of the Board of Police Commissioners' decision. The Special Master has not yet made any such determinations.

6. As a result of settlement discussions between and among all parties to this Stipulation, the parties state that all matters referred to the Special Master within the Court's May 14, 1999 Order relating to the Officers have been amicably resolved between and among the parties.

7. All parties to this Stipulation hereby stipulate and move the Court that:

(a) all matters pertaining to the Officers, the subject of the Court's Order of May 14, 1999, are moot;

(b) Lieutenant Halpin's promotion to the rank of Lieutenant shall be considered permanent as of the date six months after his promotion to that rank as a probationary lieutenant; and

(c) Captain Honis' promotion to the rank of captain shall be considered permanent as of the date six months after his promotion to that rank as a probationary captain.

8. Upon approval of this Stipulation by the Court as so ordered, the parties shall immediately withdraw or request dismissal as moot, Appeal No.'s 99-7656 and 99-3037 and the Officers' Petition for Writ of Mandamus, dated June 2, 1999, as all such proceedings shall be deemed rendered moot by the Stipulation and Order.

9. This Stipulation and Order resolves all matters, issues and claims concerning each of the five Officers raised by the Plaintiff's Complaint of July 25, 1995, the resulting orders of the Court, and rulings of the Special Master. Issues relating to the Bridgeport Police Department and Bridgeport Police Commission which are the subject of either the Court's orders or which are the subject of rulings of the Special Master are not addressed by this Stipulation.

January , 2000

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APPENDIX D

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

[Filed: January 12, 2000]

NO. 5:78CV175 (JBA)

THE BRIDGEPORT GUARDIANS, INC.,)
ET AL.)
Plaintiffs,)
)
v.)
)
ARTHUR DELMONTE, ET AL)
Defendants.)

STIPULATION

The Plaintiffs and Defendants move that the Court adopt, approve and ratify the following Stipulation as its Order in this case. The parties represent the stipulation to be an equitable resolution of extensive and complex issues now pending before this Court and the United States Court of Appeals for the Second Circuit.

WHEREAS, pursuant to the Remedy Order issued by this Court in the above referenced action on January 6, 1983, a Special Master was appointed, among other tasks, to:

(a) Review any and all disciplinary actions instituted against any black officer who claims such action is racially discriminatory in purpose or effect; and to recommend an appropriate adjustment in any such action found to be racially discriminatory as to initiation, severity of sanction or otherwise;

(b) Receive, investigate, and remedy all complaints of discriminatory treatment, racial harassment or slurs within the [Bridgeport Police Department] and, in appropriate cases, to bring disciplinary charges against those responsible and/or those supervisors who foster or permit such racial harassment to occur in violation of departmental rules; and

(c) Review any disqualification of any black officer seeking promotion which disqualification is based on grounds of any suspension, disciplinary action, or alleged misconduct upon which such sanction was premised occurring from 1978 to [January 6, 1983].

See, January 6, 1983 Remedy Order, pp. 4-6. And,

WHEREAS, in a Recommended Ruling dated July 13, 1990, the Special Master found, among other things, that the Bridgeport Board of Police Commissioners had not promptly disciplined officers and that minority officers were likelier to face discipline before the Board more frequently than similarly situated white officers. The Master ordered that the Board file a written plan to eliminate the backlog of disciplinary cases and submit monthly reports stating: (1) the cases completed with a detailed statement of the outcome; (2) the cases with hearings in progress; (3) the cases scheduled but not yet heard; and (4) the cases awaiting scheduling. The

Master also recommended the defendants be fined one thousand dollars for each day it took the Board to eliminate the backlog beyond the Court imposed deadline. See, July 13 1990 Recommended Ruling, Adopted, Approved and Ratified November 10, 1990, and

WHEREAS, the Court thereafter exhorted the Board and the Department to implement an effective and evenhanded disciplinary system, observing in part that:

> An impartial, efficient and just handling of discipline cases will aid substantially in the establishment of an esprit de corps. Officers will know they are under close supervision and will be held responsible for proper conduct under a system which provides them with adequate procedural safeguards ....
>
> The Chief, the Board of Police Commissioners and the Mayor must begin to understand that a well-disciplined Bridgeport Police Department serves the interests of both the public and Department members. Cronyism, laxness, laziness, inefficiency, incompetency, along with discrimination have no proper place in the Department's discipline process."

Recommended Ruling dated March 16, 1990 on the complaint of T. Meekins, pp 20-21, Adopted, Approved and Ratified November 14, 1990 (TFGD). And,

WHEREAS, in a supplementary ruling dated March 26, 1991, the Master acknowledged the Board's progress in eliminating the large backlog of disciplinary cases, approved the format of the reports to be filed by the Board, directed the Board to continue to file monthly discipline reports until further order of the Court, and stated the Court's expectation that cases should not remain pending before the Board for more than three months. See, Supplemental Recommended Ruling Re Discipline of Errant Police Officers By Board of Police Commissioners, March 26, 1991, pp. 4-5, Approved, Affirmed and Ratified, April 22, 1991 (TFGD). And,

WHEREAS, on August 2, 1999, the Special Master issued a Recommended Ruling regarding the compliance of the Board of Police Commissioners with the Court's Orders dated July 13, 1990 and March 12, 1991. The Ruling recommends findings that the Board repeatedly failed to comply with the orders because its reports were substantively insufficient, were untimely or not filed, and because discipline cases lingered before the Board significantly longer than three months. The Master acknowledged the need for more information regarding specific discipline imposed by the Board, and referred to the Court issues concerning the Board's alleged non-compliance with the 1990 and 1991 Orders, and any action to be taken. See, August 2, 1999 Recommended Ruling Re Compliance of Board of Police Commissioners with Court Orders of July 13, 1990 and March 12, 1991. And,

WHEREAS, in connection with a separate complaint filed with the Special Master 'by the Plaintiffs and Police Officer Joanne Simmons dated July 25, 1995, the Special Master issued a Recommended Ruling dated July 8, 1996.

The Master found that a "series .of mistakes totally lacking in willfulness" resulted in the Department's violation of the Court's February 19, 1991 Order barring Sergeant James Halpin from supervising Officer Simmons. The Master awarded Officer Simmons one dollar in nominal damages, and reserved further action pending a report from the Chief on recommended discipline against those responsible for the erroneous assignment. See, July 8, 1996 Recommended Ruling On Complaint Dated July 25, 1995 Of Officer Joanne Simmons, Adopted, Approved and Ratified March 6, 1997. And,

WHEREAS, on March 21, 1997 the Special Master issued a Supplementary Recommended Ruling on the complaint of Officer Simmons. The Master rejected Chief Sweeney's belief that no disciplinary action was appropriate. He recommended the Chief be suspended for three days, that the Department be held in contempt and pay sanctions of $10,000 to Plaintiffs, and ordered further hearings to assess the culpability of numerous individual officers for the misassignment. March 21, 1997 Recommended Ruling, Approved, Adopted and Ratified, in part, May 14, 1999.

WHEREAS, on April 2, 1997 defendants filed extensive objections to the Special Master's March 21, 1997 Ruling. Thereafter, on October 9, 1997, the Master issued a Recommended Order Re Preliminary Injunction In Aid Of Investigation, seeking to bar the promotion of certain officers pending additional hearings in the Simmons matter. And,

WHEREAS, on October 31, 1997 the Special Master issued a "Recommended Ruling After Investigation Of Violations Of 1991 Court Order Regarding Officer Joe Ann

Simmons." He found that Sergeant Halpin had not testified truthfully before him, and once again referred to the Chief the issue of what discipline should be imposed on Sergeant Halpin and other individual officers involved in making the erroneous assignment. At a November 21, 1997 heating before the Court, Arterton, J., the Special Master's October 31, 1997 findings were converted to charges against the individual officers and referred for appropriate action to the Bridgeport Board of Police Commissioners. See, January 12, 1998 Endorsement Order on 10/10/97 Recommended Order Re Preliminary Injunction. And,

WHEREAS, on February 4, 1999, the Bridgeport Board of Police Commissioners exonerated all officers of all charges referred to the Board. Thereafter, on May 14, 1999, the Court found defendants in contempt of the Court's February 19, 1991 Order. The Court remanded the Simmons matter to the Special Master for further proceedings and to recommend an appropriate remedy for Chief Sweeney's failure to assure compliance with the Court's 1991 Order, and to review the basis for the Board of Police Commissioners' exoneration of all involved officers, including Sergeant Halpin. See, May 14, 1999 Order. And,

WHEREAS, a petition for Writ of Mandamus was thereafter filed by the individual non-party police officers with the United States District Court contesting the jurisdiction and authority of the District Court to refer issues raised in the Simmons matter to the Special Master, And

WHEREAS, on April 28, 1999, in consideration of the many issues before the Court, the contentions of the parties and the long history of this litigation, the Court,

Arterton, J., encouraged the parties to pursue mediation of the foregoing issues. The Court observed:

To the extent that this is a lightening rod, any of those issues, the problem is going to be that the continued flow of complaints is indicative of something wrong. Whether or not the complaints are eventually held to have merit is not the relevant point. They are still coming. And so we would all agree, I'm sure, that an institutional change from within is that which stands in the highest likelihood of making permanent and successful change rather than having to be imposed by court order.

As I listen to you I see that perhaps we have come to that point where that ought to be explored. So, let me, in keeping with that spirit, ask you to begin doing, thinking of exploring how the larger picture of what you called the swirling morass can be dealt with. This is not an easy project to contemplate, but it does strike me that there is a real timeliness to it .... April 28, 1999 Status Conference Transcript. And,

WHEREAS, the parties thereafter pursued mediation before The Honorable Robert C. Zampano, U.S.D.J. (Ret.), and

WHEREAS, Bridgeport Police Officers' labor union, AFSCME Council 15, Local 1159, was invited to attend the mediation and attended some mediation sessions but not others, and

WHEREAS, AFSCME Council 15, Local 1159, all Bridgeport Police Officers and all members of the Bridgeport

Board of Police Commissioners have been provided a copy of this Stipulation and the attached Proposed Discipline Procedure, and have been given notice of a hearing before the Court on January 18, 2000, at 10:00 a.m., at which time there will be an opportunity to be heard, and

WHEREAS, the Mediator, The Honorable Robert C. Zampano, U.S.D.J. (Ret.), and Special Master William Clendenen have carefully reviewed this Stipulation and the attached Proposed Discipline Procedure, and find the same to be fair and equitable and recommend that the Court adopt, approve and ratify the same as its Order, and

WHEREFORE: the parties consent to, stipulate and respectfully ask the Court to adopt, approve and ratify as its Order, the following:

1. The discipline procedure attached hereto shall govern all further police officer disciplinary matters in the Bridgeport Police Department with the exception of civilian complaints brought pursuant to the Barros Decree.

2. Except as stated in this Order or in the Discipline Procedure established by this Order, all provisions of the Court's Order dated November 1, 1983, and all other Court Orders issued in the above-entitled action, shall remain in effect.

3. The findings made against the Defendants on May 14, 1998 and in the Special Master's Recommended Ruling dated August 2, 1999 are hereby rendered moot, and no fine or other penalty shall be imposed on Defendants in light of this stipulation.

4. No payment, fine or penalty shall be due Plaintiffs by or from Defendants.

5. All actions pending between Plaintiffs and Defendants before the United States Court of Appeals for the Second Circuit shall be withdrawn.

January 11, 2000 Stipulation, Bridgeport Guardians, Inc. v. Arthur Delmonte, et al.

The Plaintiffs,	The Defendants,
/s/_____	/s/_____
Vincent Mdsto, Esq.	John P. Bohannon, Jr.
Koskoff, Koskoff and Beider	Office of the City Attorney
350 Fairfield Avenue	999 Broad Street
Bridgeport, Connecticut 06604	Bridgeport, Connecticut 06604
Phone: (203)336-4421	Phone: (203) 576-7647

So ORDERED this ____ day of January, 2000.

Janet Bond-Arterton, U.S.D.J.

BRIDGEPORT POLICE DEPARTMENT
DISCIPLINE PROCEDURE

The following procedure shall govern all disciplinary actions involving sworn officers in the Bridgeport Police Department:

I. Disciplinary Actions Before Chief of Police

A. No permanent employee shall be removed, dismissed, discharged, suspended, fined, reduced in rank, or otherwise disciplined except for just cause.

B. The Chief or the Chief's designee may impose upon any officer discipline of up to fifteen (15) days suspension without pay.

C. Prior to the imposition of any discipline, the respondent officer shall be provided with a written notice specifying that the Chief or the Chief's designee will conduct a disciplinary hearing; the specific charges (rule, regulation, policy or procedure violated) against the officer; and the information upon which the charges are based. Such hearing shall be held within fifteen days after the respondent officer has been notified of the charges on a date mutually agreed upon by the Chief and the respondent officer. In the event no mutually agreed date can be scheduled within 15 days, the Chief or the Chief's designee may schedule a hearing at any time after the 15th day.

D. During the disciplinary hearing, the respondent officer shall have the right to be represented by a Union representative or retained counsel; to be informed of the

evidence against him or her; and have the opportunity to challenge the evidence presented by the Chief or the Chief's designee. The hearing shall be tape recorded or transcribed. The respondent officer may designate one individual to attend the hearing in addition to his/her chosen representative.

E. During the disciplinary hearing, the Chief or the Chief's designee shall first determine whether the respondent officer violated a rule, regulation, policy or procedure of the Department. If no violation is found, the disciplinary hearing shall be terminated and the Chief or the Chief's designee shall, within forty-five (45) days, or as soon as practicable thereafter with the consent of the Special Master or the Court, issue a written decision stating the reasons for the finding.

F. If a violation is found, the respondent officer shall promptly be informed of the proposed discipline and given the opportunity to respond. A claim by the respondent officer that the proposed discipline is disparate or unfair in comparison to past discipline imposed for a substantially similar offense, or is unfair for any other reason, shall be supported by relevant evidence. Within forty-five (45) days following the termination of the hearing, or as soon as practicable thereafter with the consent of the Special Master or the Court, the Chief or the Chief's designee shall issue a written decision setting forth the grounds for the finding(s) of culpability and the reasons for the discipline imposed.

II. Disciplinary Actions Before Hearing Officers

A. The Chief or the Chief's designee shall assign each case in which the imposition of discipline may exceed

fifteen (15) days suspension to a Hearing Officer. The Hearing Officer shall act as the disciplinary authority for the City of Bridgeport.

B. The Court shall appoint a panel of three (3) Hearing Officers, from which one shall be selected at random by the Chief or the Chief's designee to preside over the respondent officer's case. In addition, the Court shall appoint two Alternate Hearing Officers, one of whom shall be selected at random by the Chief or the Chief's designee if no member of the regular panel is available to preside over the case. The Mayor of the City of Bridgeport shall nominate persons to staff the Hearing Officer and Alternate Hearing Officer positions. The nominations shall be reviewed by the Special Master and are subject to appointment by the Court. Vacancies shall be filled by the Court in the same manner.

C. The Hearing Officers and Alternate Hearing Officers shall serve terms of five (5) years unless removed by the Court for cause and may be reappointed by the Court at the termination of their terms of office. The reasonable fees of the Hearing Officers and Alternate Hearing Officers shall be borne by the City and its agents in their official capacities.

D. A disciplinary hearing before a Hearing Officer shall commence within forty-five (45) days following a written notice to the respondent officer which shall include: the date and time of the disciplinary hearing; the nature of the specific charges (rule, regulation, policy or procedure, violated) against the respondent officer; and a brief summary of the information upon which the charges are based.

E. At the disciplinary hearing, the respondent officer shall have the right to be represented by a Union representative or retained counsel; to be informed of the evidence against him or her; and have the opportunity to challenge the evidence presented by the Chief or the Chief's designee. The hearing shall be tape recorded or transcribed. The respondent officer may designate one individual to attend the hearing in addition to his/her chosen representative.

F. During the disciplinary hearing, the Hearing Officer shall first determine whether the respondent officer violated a rule, regulation, policy or procedure of the Department. If no violation is found, the disciplinary hearing shall be terminated and the Hearing Officer shall, within forty-five(45) days or as soon as practicable thereafter with the consent of the Special Master or the Court, issue a written decision stating the reasons for the finding.

G. If a violation is found, the respondent officer shall promptly be informed of the proposed discipline and given the opportunity to respond. A claim by the respondent officer that the proposed discipline is disparate or unfair in comparison to past discipline imposed for a substantially similar offense, or is unfair for any other reason, shall be supported by relevant evidence. Within forty-five (45) days following the termination of the hearing, or as soon as practicable thereafter with the consent of the Special Master or the Court, the Hearing Officer shall issue a written decision setting forth the grounds for the finding(s) of culpability and the reasons for the discipline imposed.

III. Disclosure of Evidentiary Information

At least seven (7) work days prior to any hearing before the Chief or the Chief's designee or before a Hearing Officer, evidentiary information including the charges and the investigation report shall be delivered concurrently to the Hearing Officer and the respondent officer. The Union shall be provided with all such information to which it is entitled pursuant to the Municipal Employee Relations Act.

IV. Disclosure of Disciplinary Precedents

At least seven (7) work days prior to any hearing before the Chief or the Chief's designee or before a Hearing Officer, the Chief or the Chief's designee shall provide the respondent officer and the Hearing Officer with such information in the Department's possession and requested by the respondent officer as is permitted by the laws of privacy and confidentiality, concerning the offense, investigation and amount of discipline imposed upon other officers during the last five (5) years for substantially similar offenses. Disciplinary precedents in the interests of achieving uniformity in the imposition of discipline shall serve merely as guidelines, and shall not be deemed binding in any case before the Chief or the Chief's designee or the Hearing Officer.

V. Current Disciplinary Procedures

Except as provided herein, the prevailing provisions of the disciplinary procedures set forth in the Collective Bargaining Agreement between the City of Bridgeport and AFSCME Local 1159 shall remain in full force and effect, with the phrase "Hearing Officer" substituted for the phrase "Board of Police Commissioners" in a manner consistent with

this discipline procedure and the _____,2000 Order of the Court.

VI. Settlements:

The Hearing Officer must approve or reject any settlement of: (1) matters submitted to the Hearing Officer and (2) any matter involving discipline in excess of a fifteen day suspension. The Hearing Officer shall issue a written decision explaining the basis for approving or rejecting any settlement within forty-five (45) days of the approval or rejection.

VII. Further Proceedings:

A. Nothing in this discipline procedure or the Court's _____, 2000 Order shall be construed to restrict or affect the rights of any respondent officer to resort to the Special Master or other agency or entity for the review or appeal of the final decision of the Hearing Officer or the Chief or the Chief's designee. Such review or appeal may only be taken upon the issuance of the final decision of the Hearing Officer or the Chief or the Chief's designee.

B. No procedural deficiency hereunder shall be grounds for the dismissal, modification or reduction in any disciplinary charge against an Officer of the Bridgeport Police Department.

VIII. Publication of Discipline Procedure

Within thirty (30) days hereof, the Chief or the Chief's designee shall give each police officer in the Department a

copy of this Discipline Procedure. Newly hired officers shall receive a copy of this Discipline Procedure at the time of hire.

APPENDIX E

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

[Filed: May 14, 1999]

NO. 5:78cv175 (JBA)

THE BRIDGEPORT GUARDIANS)
)
v.)
)
ARTHUR DELMONTE, et al)
/

MEMORANDUM OF DECISION ON OBJECTIONS [DOC. #815, #818] TO SPECIAL MASTER'S RECOMMENDED RULING [DOC. #753, dated 7/10/96] & SUPPLEMENTARY RECOMMEND RULING [DOC. #811] ON THE COMPLAINT OF OFFICER JOANNE SIMMONS [dated 7/25/95; doc. #702]

With the agreement of all counsel, the Special Master's findings of July 10, 1996 were construed as charges for which probable cause existed against Chief Sweeney, Deputy Chief Scanlon, Captain Mangano, Lieutenant Honis, Sergeant Remele and Sergeant Halpin, which were to be heard by the Bridgeport Board of Police Commissioners within the historical context and purpose of the original Remedy Order, see Bridgeport Guardians v. Delmonte, 553 F.Supp. 601, 618 (D.Conn. 1983) and subsequent enforcement orders. After

much delay, the Board held a hearing on February 1, 3 and 4, 1999, the result of which was a finding exonerating all officers on all charges. Contrary to what appears to be an expression of concern in Request for Clarification [doc. #913 (referencing Court Order, doc. #875)], that the Commission would be chilled in hearing this matter knowing it would be subject to review by the Special Master, the Commissioners obviously were not so chilled, having reached their conclusions and having rejected the Special Master's findings which formed the basis of the referred charges [doc. #815, #818].

In their objections, defendants contend that the Special Master lacked jurisdiction to recommend suspension of Chief Sweeney, to conduct disciplinary hearings against these various supervisory officers, and to recommend imposition of a civil contempt fine on the Bridgeport Police Department for violation of court orders.

Defendants make no challenge to the propriety of the Special Master's delegated powers under the Remedy Order, but instead challenge his actions on the three above enumerated issues as contrary to the written terms of paragraph 10B of the Remedy Order because the improper assignment at issue resulted from, "a series of mistakes totally lacking in willfulness," not race related, and therefore, in the defendants' view, not conduct which triggers the Special Master's powers to take any action under the Remedy Order. Thus, the defendants contend, the Special Master was without authority to investigate and recommend imposition of discipline on the Chief, to conduct disciplinary hearings, or to make recommendation of a contempt finding.

In support of their position that the Special Master lacked authority for his March 21, 1997 Supplemental Recommended Ruling [doc. #811], the defendants contend that the linchpin between the powers enumerated ir paragraph 10B of the Remedy Order and the Special Master's right to exercise them is some impermissible race-based conduct by the Police Department or its employees which they claim is lacking in the context of this improper shift assignment found to have resulted from a series of mistakes totally lacking in willfulness.

In support of their characterization of the improper shift assignment, non-willful oversights or mistakes, the defendants submit that the Special Master found that Officer Simmons was promptly transferred to another shift once she brought the situation to the Chief's attention, that Sergeant Halpin purposely avoided contact with Officer Simmons on the first five occasions he was so assigned, and Officer Simmons makes no claim that the mistaken assignment resulted from race-related conduct. However, in the Court's view, it does not follow that the Special Master lacks authority to investigate violations of a court order which itself resulted from race-based conduct on the grounds that the violations themselves do not involve overt race-related conduct.

The prior order of February 19, 1991 [doc. #425] emanated from the racially harassing conduct of Sergeant Halpin towards Officer Simmons. It was this order that the Special Master concluded was violated by defendants, demonstrating an inability to comply with a clear court order.

As a result of this finding, the Special Master ordered various remedies, including Chief Sweeney's investigation and recommendation as to discipline against the various individuals involved in Sergeant Halpin's supervisory assignment over Officer Simmons on the various occasions that it occurred.

The terms of the Order of February 19, 1991 are very clear: that Officer Simmons is not to be placed under the supervision of Sergeant Halpin. This order was of remedial purpose to minimize the potential for Officer Simmons to be further racially harassed by Sergeant Halpin by removing her from contact with him since, "the record in this case shows that it is extremely difficult for a black woman on the Bridgeport Police Department to be able to work in an environment free from discrimination and harassment." (Report and Recommendation of Special Master, doc. #563, dated 7/10/92).

The record demonstrates, and the defendants acknowledge, that notwithstanding the clear mandate of the Court's orders, Sergeant Halpin was assigned to supervise Officer Simmons on six separate occasions in violation of the Order. Each of these violations allowed opportunities, even if not availed of, for Sergeant Halpin to racially intimidate or harass Officer Simmons. These six assignments are undisputed violations of a remedial order responsive to a demonstrated need to reduce the potential for racial conflict. Thus, the defendants' argument that the Special Master was without authority to investigate and make recommendation related to violations of the prior court order must be rejected. In applying the defendants' logic, if the Bridgeport Police Department ignores or fails to take care to comply with

judicial orders issued under the Remedy Order, the Special Master is without authority to act on the complaint of violation because the contemptuous behavior in and of itself is not tainted by racial discrimination. The Special Master's broad powers under paragraph 10B of the Remedy Order empower him to do all acts and take all measures necessary or proper to "receive, investigate and remedy all complaints of discriminatory treatment or racial harassment, and, in appropriate cases, to bring disciplinary charges against those responsible and/or those supervisors who foster or permit such racial harassment to occur in violation of department rules." (Remedy Order, 553 F.Supp. at 619). Within this specification, under Fed. R. Civ. P. 53(c),"...the master has and shall exercise the power to regulate all proceedings in every hearing before the master and to do all acts and take all measures necessary or proper for the efficient performance of the master's duties under the order...".

The Court concludes that the Special Master clearly acted within his authority in response to Officer Simmons' complaint by holding an investigative hearing and making findings and recommendations regarding the defendants' violation of prior court orders whose purpose was to remedy a complaint of racially discriminatory treatment. This represents a remedial situation in which the parties' rights are being enforced, not being determined or interpreted. This traditional use of the Special Master to oversee compliance is a necessary component of the Remedy Order, and thus within the powers conferred by the Remedy Order. See United States v. Microsoft, 147 F.3d 935, 954 (D.C. Cir. 1998).

The defendants further challenge the impartiality of the Special Master, claiming that he is an improper judicial

official to be designated for further proceedings on this matter. To assess this claim, the Court has analyzed the sixty-five recommended rulings which have been issued by this Special Master. In the matters that have gone to adjudication, the plaintiffs have prevailed in fourteen cases, although only infrequently obtaining all of the relief sought; and the defendants have prevailed in ten cases.

This record certainly does not support a conclusion that the Special Master has any particular bias or lacks impartiality. The Special Master's lament over continued violations of court orders does not constitute a showing of bias or partiality. He has, moreover, provided an immense value to this Court as well as to the parties as a Special Master with a long range historical perspective, who has overseen the enforcement and administration of the Court's Remedy Order since its issuance in 1982, and has come to understand the parties. Until now, his impartiality has never been subject to challenge and he has provided for the parties an efficient forum and process for implementation and enforcement of the Remedy Order. While the Court is troubled that his services continue to be necessary so many years after issuance of the Remedy Order, the Court concludes there is no reason that this Special Master should not continue to receive, investigate and remedy all complaints related to administration and implementation of the Remedy Order. Where the defendants are dissatisfied with or disagree with the conclusions in the Special Master's Recommended Rulings, they have recourse to this Court.

Lastly, the Supplemental Recommended Ruling recommends a finding that the Defendants were in contempt for violation of the 1991 Orders. For the reasons that follow,

that recommendation [doc. #811] is APPROVED and ADOPTED, in part.

For civil contempt sanctions to be imposed, three factors must be established by clear and convincing evidence. New York States Nat. Org. for Women v. Terry, 886 F.2d 1339, 1351 (2d Cir. 1989). The first is that the order the party allegedly failed to comply with is clear and unambiguous. There has been no contention that the Court's orders with respect to the assignment of Sergeant Halpin and Officer Simmons were anything but clear and unambiguous. Second, proof of noncompliance must be clear and convincing. That , too, on this record, is not contested. Third, the party must have failed to diligently attempt in a reasonable manner to comply with the Order, even without a showing of willfulness. Ellis and EEOC v. Local 28, Sheet Metal Workers Int'l. Ass'n., 1999 WL 133117 (2d Cir. 1999); see also, Canterbury Belts, Ltd. v. Lane Walker Rudkin, Ltd., 869 F.2d 34, 39 (2d Cir. 1989).

The record lacks evidence of diligent efforts to comply in a reasonable manner with the Court's order, such that violations would be avoided. Post-violation remedial action by prompt transfer and annotated seniority roster is relevant to consideration of remedial sanctions to coerce future compliance, but is not, by definition, indicative of an effort to comply ab initio. The assigning officers were either unaware of the Order or had at best an informal awareness of the existence of an Order bearing on this subject matter and Sergeant Halpin claims he believed the Order was no longer in effect.

While the defendant characterized these violations of court orders as honest mistakes, such "mistakes" occurred in the absence of any program, plan or steps taken to ensure compliance, and must then be viewed as a form of disrespect for or defiance of the court order and the importance of its underlying purpose of developing a work environment in the Police Department free of race discrimination and harassment.

There are two recognized purposes for imposing contempt sanctions. The first is to coerce a party into compliance with court orders and is an appropriate purpose evident from the record thus far, see Ellis and EEOC v. Local 28, Sheet Metal Workers Int'l. Ass'n., supra. The Court, however, disapproves and declines to adopt the recommended $10,000 fine payable to the Guardians in light of the Special Master's express finding that the evidence demonstrates a series of mistakes totally lacking in willfulness. An award of attorney's fees requires a finding of willfulness. See King v. Allied Vision, Ltd., 65 F.3d 1051 at 1063 (2d Cir. 1995). The Court will await the Special Master's findings on the status of the defendants' overall compliance with the Court's other orders, the defendants' history of compliance and any other matters that may bear on or be reflective of the defendants' reasonable diligence in complying with court orders related to the Remedy Order or the need for effective coercive measures. The Court will reserve on the amount of fine or other remedial sanction or order necessary to coerce defendants' future compliance with court orders.

The second purpose for a civil contempt sanction is to compensate a party for losses sustained. The Special Master's July 10, 1996 Recommended Ruling [doc. #752] found that Officer Simmons herself has shown no damages from the

violation. However, the Bridgeport Guardians will be given the opportunity to demonstrate any costs, losses, expenses it incurred as a result of the Simmons-Halpin order violation, excluding attorney's fees.

Having concluded that the Special Master is not acting outside the scope of his authority in investigating violations of the Court's orders which themselves are unchallenged as appropriate under the Remedy Order, this matter is remanded to the Special Master for further proceedings as follows. A hearing will be held forthwith before the Special Master for the purpose of recommending court action appropriate to Chief Sweeney's "full responsibility" for the multiple violations of the Simmons-Halpin assignment court order.

This hearing will also review the decision of the Board of Police Commissioners, exonerating all officers of all charges against them referred by this Court, to evaluate the adequacy of the procedures and process utilized by the Board to review the record of the violations of the 1991 Simmons-Halpin assignment order as well as the reasonableness of the substantive analysis undertaken to arrive at its exoneration findings. After review, the Special Master will report to the Court his evaluation of whether the Board's findings are reasonable in light of the investigative record and adequate considering the full scope of the charges referred advising of any charge that was referred but not acted on.

Inasmuch as Sergeant Halpin was found by the Special Master to have been untruthful in his sworn testimony before him, the Special Master is directed to specifically identify the basis and reason for the Board's exoneration of Sergeant Halpin on this charge, and report as to the reasonableness and

adequacy of the Board's determination on this charge. All documents and witnesses that are identified by the Special Master as necessary for this review shall be produced at or before the hearing.

Following receipt of the Special Master's findings, this Court will hold a hearing on contempt sanctions necessary to coerce the defendants' future compliance, relevant to which will be the Special Master's report on the status of the defendants' overall compliance with pending orders.

Although the Court declined to adopt the Special Master's Recommended Order Regarding Preliminary Injunction in Aid of Investigation [doc. #851, dated 10/10/97], the Court will assume that no permanent appointments will be acted upon by defendants until all matters involving officers potentially reached for permanent appointment have been resolved, or that the defendants will give the Court advance notice of any planned permanent appointments with opportunity for a hearing prior to their effective date.

The Clerk is directed to enter this order forthwith.

IT IS SO ORDERED.

/s/_____
JANET BOND ARTERTON
United States District Judge

Dated at New Haven, Connecticut: May 13, 1999

APPENDIX F

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

[Filed: January 13, 1998]

CIVIL NO.
NO. 5:78cv175 (JBA)

THE BRIDGEPORT GUARDIANS, INC.,)
ET AL.)
Plaintiffs,)
)
v.)
)
ARTHUR DELMONTE, ET AL)
Defendants.)
/

ENDORSEMENT ORDER ON RECOMMENDED ORDER RE PRELIMINARY INJUNCTION IN AID OF INVESTIGATION [doc. 851]

The Special Master's Recommended Preliminary Injunction in Aid of Investigation relates to enjoining the permanent promotion of Deputy Chief Thomas Scanlon, Captain Robert Mangano, Lieutenant Albert Fedorek, Lieutenant James Honis, Sergeant William Chapman, Sergeant James Halpin and Sergeant Aida Remele in order to preserve the status quo during the ongoing investigation concerning potential violations of the Court's order of

February 19, 1991 relating to Officer Joe Anne Simmons Meekins, specifically ordering that Officer Meekins was not to be supervised by Sergeant Halpin.

On October 31, 1997, the Special Master issued a Recommended Ruling After Investigation of Violations of the 1991 Court Order Regarding Officer Joe Ann Simmons. At a November 21, 1997 hearing on the Recommended Preliminary Injunction in Aid of Investigation, the parties agreed that the Special Master's October 31, 1997 findings may be characterized as charges brought as a result of the investigation, which charges would proceed to internal Bridgeport Police Department investigation and discipline. Thus, the Court construes those findings as charges that Sergeant Halpin, Deputy Chief Scanlon, Captain Mangano, Lieutenant Honis and Sergeant Remele violated the Court's February 1991 Order. The Special Master also recommends that charges not be brought against Sergeant Chapman and Lieutenant Fedorek.

The City has represented, by letter to the Court, that Lieutenant Honis ranked second on the Captain's promotional list, and Sergeant Halpin ranked fifth on the Lieutenant's promotional list, and that both would likely be reached for promotion. The parties agree that the Bridgeport Charter and the applicable collective bargaining agreement provide that no promotion will be deemed final, i.e., permanent, until after the expiration of a period of six months probation. The City advises it is now in a position to make probationary appointments.

While the Court has the Recommended Preliminary Injunction in Aid of Investigation and the Special Master's

recommended ruling in the Meekins case under advisement, based on the representations of counsel at the hearing, the Court concludes that probationary promotions at this time are not inconsistent with the recommended injunction of permanent promotions of Sergeant Halpin and Lieutenant Honis pending disposition of the charges against them of violating the Court's Order.

Accordingly, the Bridgeport Police Department is not precluded by any Special Master recommendation or court order from making probationary promotional appointments as it deems appropriate at this time. By this clarification, the Court expresses no view as to any inferences which may be drawn from any promotions of these individuals at this time.

IT IS SO ORDERED.
/s/_____
Janet Bond Arterton
Unite States District Judge

Dated at New Haven, Connecticut: January 12, 1998.

APPENDIX G

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

[Filed: November 4, 1997]

CIVIL ACTION NO. B78-175 (JBA)

THE BRIDGEPORT GUARDIANS, INC.,)
ET AL.)
Plaintiffs,)
)
v.)
)
ARTHUR DELMONTE, ET AL)
Defendants.)
/

RECOMMENDED RULING AFTER INVESTIGATION OF VIOLATIONS OF 1991 COURT ORDER REGARDING OFFICER JOE ANN SIMMONS

INTRODUCTION:

Pursuant to the remedy order of January 6, 1983, the Special Master initiated an investigation of violations by the defendants of a 1991 court order. Hearings were held on September 24 and 25, 1997, at which Deputy Chief Thomas Scanlon, Captain Robert Mangano, Lieutenant Albert Fedorek, Lieutenant James Honis, Sergeant William Chapman, Sergeant James Halpin, and Sergeant Aida Remele

testified. The testifying individuals were represented by counsel and had a full opportunity to cross-examine and present evidence. The matter is now ready for decision.

BACKGROUND:

Following an incident in which then Acting/Sergeant Halpin harassed Officer Joe Ann Simmons, this Court issued an order in 1991, directing the defendants "to insure that Acting Sergeant Halpin have no opportunity to intimidate or harass Officer Simmons." The order included "a bar against placing Officer Simmons under Acting/Sergeant Halpin's supervision." Recommended Ruling on Complaint Dated April 11, 1990 of Officer Joe Ann Simmons, at 11, dated February 19, 1991, approved, adopted and ratified, April 2, 1991 ("Ruling, 2/19/91").

The defendants violated the 1991 order by assigning Sergeant Halpin to supervise Officer Simmons on at least six occasions in January and February, 1995. Recommended Ruling On Complaint Dated July 25, 1995 of Officer Joe Ann Simmons, slip op. at 5, dated July 8, 1996, approved, ratified and adopted, March 6, 1997 ("Ruling, 7/8/96"). After a hearing on April 17, 1996, the Court withheld certain disciplinary action pending a report from Chief Sweeney "on what action, if any, he recommends be taken against any of the individuals involved in the assignment of Sergeant Halpin to supervise Officer Simmons." Id., at 6.

Apparently misunderstanding the seriousness of the violations, Chief Sweeney reported on October 16, 1996 that "an honest mistake was made" and no "disciplinary action should be taken against any subordinate officer of this

Department. In a supplementary ruling, the Special Master found the Department in civil contempt, and recommended a $10,000 fine. Supplementary Recommended Ruling on Complaint Dated July 25, 1995 of Officer Joe Ann Simmons, slip op. at 4, dated March 21, 1997 (objection pending) ("Supplementary Ruling, 3/21/97"). The Special Master also proposed a three-day suspension for Chief Sweeney, who assumed full responsibility for the violations of the 1991 order. Id, at 5. The Supplementary Ruling, 3/21/97 offered Chief Sweeney the opportunity to reject the suspension and have a full due process hearing. It also noticed hearings with Deputy Chief Scanlon, Captain Mangano, Lieutenant Fedorek, Lieutenant Honis, and Sergeants Chapman, Halpin, and Remele to investigate the "violation of this Court's order and [to consider]...what, if any, further action or discipline should be imposed on the above individuals under the Remedy Order and the Department's Rules and Regulations." Id., at 6-7.

The defendants objected to the Supplementary Ruling, 3/21/97, and Chief Sweeney neither rejected nor accepted the proposed discipline. Interpreting silence as a request for a hearing, the Special Master noticed a hearing for the Chief on June 24, 1997. See Order Re Hearin for Thomas Sweeney, Chief of Police, dated April 11, 1997. That hearing was continued, but the investigation went forward on September 24 and 25, 1997. After hearing the testimony on those dates, the Special Master recommended a Court order prohibiting the Department from permanently promoting any of the individuals involved in the investigation until further Court order. Recommended Order re Preliminary Injunction in Aid of Investigation, dated October 9, 1997 (objection pending). The recommended order was issued to preserve the status quo

during the pendency of the investigation into the serious violations of the 1991 order.

DISCUSSION AND FINDINGS OF FACT

The evidence presented on April 17, 1996 and September 2425, 1997 reveals the following facts. In late 1994, Sergeant Chapman performed the administrative task of assigning more than 400 officers in the Bridgeport Police Department to one of three different shifts. Sergeant Chapman prepared shift assignment lists according to the numbers Deputy Chief Scanlon determined were needed on each shift. Sergeant Chapman assigned officers to shifts based on their bids and seniority, as required by the collective bargaining agreement. In late 1994, Sergeant Halpin and Officer Simmons were both assigned to the C-shift for 1995. Although Sergeant Chapman had heard rumors of past problems between Sergeant Halpin and Officer Simmons, he had no official notice of the 1991 order and did not see it until sometime in September, 1997.

Sergeant Chapman provided draft lists of the 1995 shift assignments to Chief Sweeney and Deputy Chief Scanlon. Chief Sweeney had delegated to Deputy Chief Scanlon the final authority for approving shift assignments, and Scanlon approved the lists for 1995. Chief Sweeney signed the orders putting out the shift assignment lists. Copies of the lists were then sent to the shift supervisors. Later the lists were finalized and posted for the officers to view in mid-December, 1994.

According to Sergeant Halpin's testimony, soon after he saw the lists, he met with Lieutenant Fedorek in the patrol

office, while Lieutenant Honis was present. Halpin reportedly told Fedorek that he and Officer Simmons had had problems in the past, and asked the Lieutenant to "put as much distance as you can between us." Lieutenant Fedorek denies that any such conversation took place, and Lieutenant Honis never heard such a conversation. Captain Mangano, the C-shift supervisor, remembers that soon after he received the shift assignment lists, Sergeant Halpin announced in a crowded patrol office, "Hey, don't put me near her!" It was a passing, three-second comment, uttered almost in jest. Captain Mangano could not recall who else was in the office at the time.

In late December, 1995, Captain Mangano delegated the process of assigning jobs within the C shift to Lieutenant Honis and Sergeant Remele. Lieutenant Honis was familiar with the requirements of the Remedy Order and tracked past assignments of the officers. He therefore knew who should move where, according to the Remedy Order. Lieutenant Honis placed the C-shift officers in squads, and assigned them to cars and sections. Sergeant Remele made the appropriate changes in the computer. She did not have discretion to assign officers to different places. Lieutenant Fedorek was new to the C shift, and was not involved in the assignment process. Captain Mangano approved the job assignments made by Lieutenant Honis and Sergeant Remele.

Deputy Chief Scanlon, Captain Mangano, Lieutenants Honis and Fedorek, and Sergeant Remele all had varying knowledge and awareness of the 1991 order. Captain Mangano knew that an order had been issued barring Halpin from supervising Simmons, but thought the order had expired when Halpin was promoted to full sergeant. Deputy Chief

Scanlon, Lieutenant Fedorek and Sergeant Remele had heard rumors and "bits and pieces" of the story. Lieutenant Honis claims never to have heard anything about problems that Halpin had with Simmons. None of these individuals read the 1991 order banning Halpin from supervising Simmons until they received the order in September, 1997 from Attorney Bohannon.

Sergeant Halpin was assigned to Squad 5 and Officer Simmons was originally assigned to Squad 2, under Sergeant Remele. Later, Sergeant Remele informed Lieutenant Honis and Captain Mangano that Officer Simmons was interested in working in Booking, a position that is not popular. Captain Mangano moved Officer Simmons to Booking. Officer Simmons and Sergeant Halpin had opposite days off. However, Sergeant Halpin rotated with other sergeants as the Booking Supervisor. Because of this rotation, Sergeant Halpin was assigned to supervise Officer Simmons on at least six occasions in January and February of 1995.

On February 13, 1995, Officer Simmons discovered that Sergeant Halpin was her supervisor that evening. She later learned that he had supervised her on previous occasions. She wrote to Captain Mangano, asking to be transferred to the B shift.

After receiving the memo from Officer Simmons, Captain Mangano and Lieutenant Honis reported the problem to Chief Sweeney. They testified that the Chief apparently knew there was an order barring Halpin's supervision of Simmons. The Chief showed no surprise at Officer Simmons's complaint and promised to "take care of it immediately." He transferred Officer Simmons to the B shift.

It is evident from the above facts that many individuals share responsibility for the 1995 violations of the 1991 order. As Chief Sweeney himself admitted in his report of October 16, 1996, he is "ultimately responsible for the day-to-day operations of the Department." See Supplementary Ruling, 3/21/97 at 2. Chief Sweeney clearly knew of the 1991 order and was involved in the multiple hearings concerning Officer Simmons and Sergeant Halpin.

The original ruling of February 19, 1991, directed Chief Sweeney to "review Acting/Sergeant Halpin's actions and behavior and report to the Court on what action he recommends be taken." Ruling, 2/19/91, slip op. at 10. In his May, 1991 report, Chief Sweeney recommended sensitivity training for then Acting/Sergeant Halpin, and reported that he had been made a permanent sergeant subject to a six-month probation.

After a hearing on Chief Sweeney's report, the Special Master issued a supplemental ruling, explaining:

> The record in this case shows that it is extremely difficult for a Black woman in the Bridgeport Police Department to be able to work in an environment free from discrimination and harassment. Unfortunately, Chief Sweeney's report in many ways misses the point of the recommended ruling and the seriousness of the misconduct directed at Officer Simmons.

Supplemental Recommended Ruling Re Complaint of Officer Joe Ann Simmons, dated July 6, 1992, affirmed, approved

and ratified, September 8, 1992 (case remanded to Special Master for earliest date of further action on Halpin's promotion). With substantial reservations, the Court accepted the Department's approach to improving Sergeant Halpin, but delayed his permanent promotion to July 16, 1993, at the earliest. The Court ordered the Department to file with the Special Master quarterly evaluations of Sergeant Halpin's performance. Id.; Second Supplemental Recommended Ruling re Complaint of Officer Joe Ann Simmons, dated September 29, 1992, affirmed, approved and ratified, October 28, 1992.

Under Chief Sweeney's direction and supervision, Sergeant Halpin's performance was evaluated and progress reports were filed with the Court. Halpin was promoted permanently to the rank of sergeant in August, 1993. Thus since 1991, Chief Sweeney has participated in each stage of the Simmons-Halpin saga.

These 1997 hearings confirmed that Chief Sweeney was the individual with the most knowledge of the 1991 order and with overall responsibility for shift assignments and job assignments within the Bridgeport Police Department. Moreover, he is responsible for enforcing court orders within the Department and of informing supervisors of court orders that affect them and their subordinates. The remedy for Chief Sweeney's failure to carry out this responsibility will await further proceedings in this Court.

Deputy Chief Scanlon, Captain Mangano, Lieutenant Honis, Sergeant Remele and Sergeant Halpin also played small but significant roles in the violations of the 1991 order. Deputy Chief Scanlon gave final approval of the lists assigning Sergeant Halpin and Officer Simmons to the same

shift. Moreover, he was in charge of uniformed services. He supervised Captain Mangano, and Lieutenant Honis, through the chain of command. Captain Mangano had ultimate responsibility for job assignments on the C shift. He approved Lieutenant Honis's work, and specifically assigned Officer Simmons to work in Booking.

Lieutenant Honis and Sergeant Remele worked together to assign officers to various positions within the C shift. Although it appears that Sergeant Remele had little decision-making authority in this activity, she was also involved in assigning Officer Simmons to Booking.

I find that Deputy Chief Scanlon, Captain Mangano, Lieutenant Honis, and Sergeant Remele knew, or reasonably should have known of the 1991 order barring Halpin from supervising Simmons. Although it appears that they did not have official notice of the order, all except Lieutenant Honis admitted some prior knowledge of the problems between Sergeant Halpin and officer Simmons.

Sergeant Halpin, of course, knew of the 1991 order, knew that he was assigned to supervise officer Simmons, but did not say anything to his supervisors between January 4, and February 13, 1995. He asserts that he believed the order was no longer in effect, based on a conversation with former City Attorney Thomas Jackson. He was nevertheless concerned enough that he apparently made some comments in the patrol office about not being put "near" officer Simmons.

The first five times he was assigned as Booking supervisor, he purposely avoided contact with officer Simmons.[1]

I find that two individuals--Sergeant Chapman and Lieutenant Fedorek -- played no substantial role in these events and should not be disciplined. Although Sergeant Chapman drafted the lists assigning officers to the three shifts, he was not ultimately responsible for approving those assignments. He prepared the lists based on seniority only, subject to the Deputy Chief's approval. Moreover, sergeant Chapman did not prepare the job assignments within the shifts. He had no involvement in assigning sergeant Halpin to supervise officer Simmons.[2]

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[1] I do not believe that Sergeant Halpin "surreptitiously contrived a way to become Officer Simmons' supervisor. Post Investigation Hearing Comments of Deputy Chief Scanlon, Captain Margano, Lieutenant Honis, Sergeant Chapman, Sergeant Halpin and Sergeant Remele at 13. I do find that Sergeant Halpin chose to "hide out" and neglect his supervisory duties rather than inform his supervisors of an untenable job assignment.

[2] As noted in the Recommended ruling of July 8, 1996: "By assigning Sergeant Halpin and Officer Simmons to the same shift, the Department created possibilities for Officer Simmons to be in contact with, and supervised by Sergeant Halpin." This statement is still true, and as ordered, Sergeant Halpin and Officer Simmons should be assigned to different shifts. See Ruling, 7/8/96, slip op, at 5. However, this supplementary investigation made it clear that Sergeant Chapman did not have ultimate authority regarding the shift assignments. Moreover, it was the supervisors on the C shift, not Sergeant Chapman, who assigned Halpin to supervise Simmons.

The testimony of Lieutenant Honis, Sergeant Remele, and Lieutenant Fedorek himself, all confirm that Lieutenant Fedorek had no role in making job assignments within the C shift in late 1994, early 1995. Thus, he was not responsible for the violations of the 1991 court order. His denial that Sergeant Halpin informed him of problems with Simmons and asked for "distance" was credible, and was confirmed by Lieutenant Honis's testimony.

Conversely, Sergeant Halpin was not credible when he testified that he had such a conversation with Lieutenant Fedorek. This conclusion is based on several factors, in addition to the contrary credible testimony of Lieutenants Fedorek and Honis. It was clear from the investigation that Sergeant Halpin did not get along with Lieutenant Fedorek, and on occasion challenged his authority. Thus, Sergeant Halpin was not likely to confide in Lieutenant Fedorek and ask for a favor. Moreover, Lieutenant Fedorek was not involved in making assignments, so such a conversation would serve no purpose. It seems much more likely that, as Captain Mangano testified, Sergeant Halpin made a passing comment to no one in particular in a crowded patrol office that may or may not have included Lieutenant Fedorek. In sum, I find that Sergeant Halpin did not testify truthfully before me.

This matter is referred to Chief Sweeney to determine what discipline should be imposed on Sergeant Halpin based on the findings set forth in this ruling.[3] If the Chief believes

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[3] These findings indicate potential violations of several departmental policies and regulations.

that a suspension of more than fifteen days is warranted, he is directed to prepare charges and file them with the Board of Police Commissioners. If the matter is sent to the Board of Police Commissioners for their action, the Board shall hear and resolve the case within ninety days of receiving the charges. The Board shall then send its decision to the Special Master for review and further order of this Court.

In addition, the Chief shall determine what if any discipline should be imposed on Deputy Chief Scanlon, Captain Mangano, Lieutenant Honis and Sergeant Remele. He shall consider that these individuals did not have official notice of the 1991 order until after these events occurred. The Chief shall report to the Special Master within 30 days of his proposed action on this matter.[4]

Until further notice, the Recommended Order in Aid of Investigation, dated October 9, 1997, remains in effect for Deputy Chief Scanlon, Captain Mangano, Lieutenant Honis and Sergeants Remele and Halpin, pending Chief Sweeney's or the Board's actions on this matter and the further order of this Court. The 10/9/97 order no longer applies to Sergeant Chapman and Lieutenant Fedorek.

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[4] If the Chief determines that a suspension of more than fifteen days is warranted, he is directed to follow the procedure set forth related to Sergeant Halpin.

Dated at New Haven, Connecticut this 31st day of October, 1997.

/s/_____
WILLIAM H. CLENDEN, JR.
Special Master
P.O. Box 301
New Haven, CT 06502
203/787-1183

APPENDIX H

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

[Filed: March 24, 1997]

CIVIL ACTION NO. B78-175 (JBA)

THE BRIDGEPORT GUARDIANS, INC.,)
ET AL.)
Plaintiffs,)
)
v.)
)
ARTHUR J. DELMONTE, ET AL)
Defendants.)

SUPPLEMENTARY RECOMMENDED RULING ON COMPLAINT DATED JULY 25, 1995 OF OFFICER JOE ANN SIMMONS

BACKGROUND:

On February 19, 1991, this Court directed that "[u]ntil further order of the Court the defendants are ordered to insure that Acting Sergeant Halpin have no opportunity to intimidate or harass Officer Simmons. This order includes a bar against placing Officer Simmons under Acting Sergeant Halpin's supervision." Recommended Ruling 2/19/91, at 11, approved, adopted and ratified, April 2, 1991.

In July, 1996, the Court found that the defendants had violated this order by assigning Sergeant James Halpin to supervise Officer Joe Ann Simmons on at least six occasions in January and February, 1995. Recommended Ruling, 7/8/96, at 5, approved, ratified and adopted, March 6, 1997. The Court withheld disciplinary action pending a report from Chief Sweeney "on what action, if any, he recommends be taken against any of the individuals involved in the assignment of Sgt. Halpin to supervise Officer Simmons." Id., at 6.

Chief Sweeney has submitted his report; the plaintiffs have responded, and the defendants have commented on the plaintiffs' responses. The case is now ready for this supplementary ruling.

DISCUSSION AND RECOMMENDED ORDER:

After reviewing the OIA investigation and the background of the 1995 incidents, Chief Sweeney concluded that "an honest mistake was made" and no "disciplinary action should be taken against any subordinate officer of this Department." Memo to Special Master, dated October 16, 1996, at 5. He admitted that he was "ultimately responsible for the day-to-day operations of the Department," and accepted "full responsibility for that oversight....For my oversight I leave it to the court to determine what, if any is the appropriate outcome." Id. at 2. See also, id. at 5.

This case involves uncontested violations of a court order. After reviewing the entire record, the Special Master hereby finds the Department in civil contempt of the Court's order of February 19, 1991. Civil contempt is a "sanction imposed to compel obedience to a lawful court order or to

provide compensation to a complaining party...." Pro-Choice Network v. Walker, 994 F.2d 989, 994 (2d Cir. 1993) (citations omitted). A court has the inherent power to hold a party in civil contempt when: (1) the order violated was "clear and unambiguous, (2) the proof of noncompliance is clear and convincing, and (3) the party has not diligently attempted in a reasonable manner to comply." New York State National Organization for Women, v. Terry, 886 F.2d 1339, 1351 (2d Cir. 1989), cert. den., 495 U.S. 947 (1990). In this case, these requirements have been satisfied.

The Court's order of February 1991 was clear and unambiguous, and the proof of non-compliance was clear and convincing. Indeed, the defendants admitted that they failed to comply with the order. Moreover, the evidence shows that the defendants did not diligently attempt in a reasonable manner to comply. As discussed in the recommended ruling, the defendants could have avoided violating the order at many levels, from Chief Sweeney, to Sergeant Halpin. While the violations may not have been willful, they could, and should have been avoided.

The Special Master therefore orders the defendants to pay $10,000 to the plaintiff, the Bridgeport Guardians, Inc., to coerce future compliance and to compensate the organization for expenses they incurred in enforcing this, and other orders of this Court in this case. See Pro-Choice Network, supra. See also State of New York v. Shore Realty Corp., 763 F.2d 49, 54 (2d Cir. 1985) (plaintiff is entitled to received coercive fines because court orders were issued for its benefit). The record clearly indicates that the Guardians have suffered uncompensated losses and expenses stemming

from the Bridgeport Police Department's failure to comply with orders of this Court.[1]

For too long, the Court has dealt leniently with members of the Department who have violated orders of the Court and Departmental Rules and Regulations. For example, the Court advised members of the Department that "[f]uture incidents will be subject to serious discipline." See Recommended Ruling Re Incident of October 10, 1989, p. 11, approved, adopted and ratified, August 24, 1990. The time is long over for the Court to tolerate any additional violations of its orders.

Chief Sweeney in his memorandum dated October 16, 1996, admitted the violation of the court order and accepted full responsibility for it. He also advised that he left his discipline to the Court's judgment. Accordingly after due consideration of the entire record, including the long history of' this case, as a further remedy to Officer Simmons's complaint, the Special Master recommends that Chief Sweeney be suspended for three consecutive days without pay. His suspension should occur at a time when the affairs of the Department are in order and it can run smoothly in his absence. The Chief shall designate an acting chief for the duration of his suspension. Counsel for the parties shall

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[1] In addition, payment of the fine to the Guardians, treasury will have a double coercive effect. Not only will such payment deter the Department from violating this Court's orders in the future, it will encourage the Bridgeport Guardians to continue to seek enforcement of such orders. The payment will provide funds to support future enforcement actions.

confer with the Special Master concerning the suspension's scheduling.

It is with great reluctance that the Special Master proposes this discipline. This Court cannot, and will not, however, tolerate violations of its clear and direct orders, orders imposed to improve racial harmony in the Department. "No man is above the law," and Chief Sweeney assumed full responsibility for the errors that led to the violations of the 1991 order. The Chief may accept this proposed suspension, or may request a hearing on the question of an appropriate penalty. Ne shall advise the Special Master within 15 days of his choice. If Chief Sweeney chooses to reject the proposed suspension, he will be afforded a hearing with full due process rights on June 24, 1997 at 2:00 p.m. at the United States Courthouse, 915 Lafayette Boulevard, Bridgeport, Connecticut.[2]

The Special Master will at that same time hear further testimony and receive evidence in conjunction with the violations of this Court's order dated February 19, 1991, relating to, Officer Joe Ann Simmons. The plaintiffs, the defendants and others may attend the hearing, and if relevant, present appropriate documentary evidence and witnesses.

Counsel for the defendants is hereby ordered to produce at the hearing, all documentary evidence related to the said violations of the Court order. Counsel for the

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[2] If the Chief accepts the proposed discipline, he will not be a party to the hearing. However, he will need to be present and be a witness concerning the other aspects of the hearing.

defendants is also directed to secure the attendance of Deputy Chief Thomas Scanlon, Captain Robert Mangano, Lieutenant Albert Fedorek, Lieutenant James Hanis, Sergeant William Chapman, Sergeant James Halpin, and Sergeant Aida Remele at said hearing.

The hearing will also include a further investigation of the said violation of this court's order and a consideration of what, if any, further action or discipline should be imposed on. the above individuals under the Remedy Order and the Department's Rules and Regulations. See Recommended Ruling Re Incident of October 10, 1989, dated May 9, 1990, supra.

Counsel for the defendants is ordered to serve a copy of this order on each of the above named individuals on or before April 1, 1997 and to advise each individual of his right to be represented by counsel at the hearing. Each individual shall have the right to participate fully in the hearing, to testify and to present appropriate documentary evidence and witnesses. Counsel for the defendants shall file an acknowledgement of said service and notification with the clerk and the Special Master on or before April 15, 1997.

Counsel for the defendants shall direct that the defendants post a copy of this order on the Department of Police Bulletin Board(s) upon receipt and maintain it there until the hearing.

Dated at New Haven, Connecticut this 21 day of March, 1997.

/s/_____
WILLIAM H. CLENDENEN, JR.
Special Master
P.O. Box 301
New Haven, CT 06502
203/787-1183

APPENDIX I

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

[Filed: July 10, 1996]

CIVIL ACTION NO. B78-175 (TFGD)

THE BRIDGEPORT GUARDIANS, INC.,)
ET AL.)
Plaintiffs,)
)
v.)
)
ARTHUR DELMONTE, ET AL)
Defendants.)

RECOMMENDED RULING ON COMPLAINT
DATED JULY 25, 1995
OF OFFICER JOE ANN SIMMONS

BACKGROUND

On July 25, 1995, Officer Joe Ann Simmons filed a complaint under Paragraph 10 of the Remedy Order of January 6, 1983, alleging violations of the Remedy Order and the Order of this Court dated February 19, 1991.

Pursuant to the Remedy Order and the Order of February 27, 1984 establishing the procedure for handling

complaints arising under Paragraph 10, the complaint was assigned to the Special Master for hearing and a recommended ruling. The Special Master noticed and held a hearing on the matter on April 17, 1996. At the hearing, the parties were represented by counsel and had a full opportunity to present witnesses, documentary evidence and argument. The parties submitted briefs in May, 1996.

The Special Master ordered the Office of Internal Affairs to investigate possible violations of departmental rules concerning the allegations of Officer Simmons' complaint. The Office of Internal Affairs completed the investigation and filed a report on May 20, 1996. The case is now ready for decision.

DISCUSSION AND FINDINGS OF FACT

Joe Ann Simmons is an African American who has been a police officer in the Bridgeport Police Department since 1988. On February 19, 1991, the Special Master filed a recommended ruling finding that in 1990 now Sergeant James Halpin had harassed and intimated Officer Simmons, in violation of the Remedy Order and Department rules and regulations. The Special Master ruled that "[u]ntil further order of the Court the defendants are ordered to insure that Acting Sergeant Halpin have no opportunity to intimidate or harass Officer Simmons. This order includes a bar against placing Officer Simmons under Acting Sergeant Halpin's supervision." Recommended Ruling 2/19/91, at 11. On April 2, 1991, the Honorable T. F. Gilroy Daly, United States District Judge approved, adopted and ratified the recommended ruling.

The Special Master filed two supplementary recommended rulings on Officer Simmons's 1990 complaint. In neither ruling did the Special Master lift the ban on placing Officer Simmons under Sergeant Halpin's supervision. Both recommended rulings were approved, adopted and ratified by Judge Daly.

In late 1994, Officer Simmons and Sergeant Halpin were both assigned to the C shift (1500h to 2300h). Sergeant Chapman made the shift assignments based on bids and seniority. He did not consider that he had placed Officer Simmons and Sergeant Halpin on the same shift.

Chief Sweeney approved and signed the shift assignment orders. The Chief was aware of the February 19, 1991 order and the requirement that the Department permit "no opportunity" for Sergeant Halpin to intimidate or harass Officer Simmons. By assigning Sergeant Halpin and Officer Simmons to the same shift, the Department created possibilities for Officer Simmons to be in contact with, and supervised by Sergeant Halpin. As Chief Sweeney candidly admitted: "There's no excuse [for assigning them to the same shift] other than we made a mistake." Tr. at 43.

Officer Simmons was assigned to Booking on the C Shift. On at least six occasions in January and February of 1995, Sergeant Halpin was assigned to supervise the booking area while Officer Simmons was working. Sergeants are assigned to supervise the booking area on a rotating basis according to a computer-generated schedule. Neither Sergeant Halpin nor the supervisors in charge of assignments within Shift C tried to adjust the schedule to prevent Sergeant Halpin from supervising Officer Simmons.

Sergeant Halpin knew that he was assigned to supervise Officer Simmons. The first five times he was so assigned, he avoided any contact with Officer Simmons, and therefore could not properly supervise the booking area. Officer Simmons was not aware that Sergeant Halpin was her supervisor until February 13, when Sergeant Malpin came to the booking desk to return property to a prisoner being released. On that occasion, he shut the door between the booking officers and the cell block. His action momentarily upset Officer Simmons who was responsible for overseeing the prisoners and ensuring their safety. As Sergeant Halpin, left he told the booking officers they could open the door.

After the incident on February 13, 1995, Officer Simmons learned that Sergeant Halpin had been assigned to supervise her on other occasions. She immediately wrote to Captain Mangano and Chief Sweeney, requesting reassignment to the B shift. Sergeant Halpin concurred in her request. On February 24, 1995, Chief Sweeney transferred Officer Simmons to the B shift.

The defendants have admitted violating this Court's order of February 19, 1991. But the plaintiff has not shown any damages arising from the violation; she was promptly transferred to the B Shift once she brought the situation to Chief Sweeney's attention.

While violations of outstanding court orders are not to be countenanced, the evidence demonstrates a series of mistakes totally lacking in willfulness. Officer Simmons is accordingly awarded nominal damages of $1.00 for the violations of the Court's order.

Until further order of the Court, the defendants are to assign Officer Simmons and Sergeant Halpin to different shifts and to ensure that they have no contact with one another. The Office of Internal Affairs ("OIA") is ordered to supply Chief Sweeney with a copy of its report dated May 20, 1996. Chief Sweeney is directed to report to the Special Master within thirty days on what action, if any, he recommends be taken against any of the individuals involved in the assignment of Sgt. Halpin to supervise Officer Simmons. The Court will withhold disciplinary action until it receives the Chief's report.

As the prevailing party, Officer Simmons is entitled to attorney's fees and costs. The parties shall confer on the amount of fees and costs within 30 days. If no agreement is reached, the parties shall submit the fee request and any objection within 45 days.

Dated at New Haven, Connecticut this 8 day of July, 1996.

/s/_____
William H. Clendenen, Jr.
Special Master
P.O. Box 301
New Haven, CT 06502
203/787-1183

APPENDIX J

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

[Filed: March 26, 1991]

CIVIL ACTION NO. B78-175 (TFGD)

THE BRIDGEPORT GUARDIANS, INC., ET AL.
Plaintiffs,

v.

ARTHUR J. DELMONTE, ET AL
Defendants.

SUPPLEMENTAL RECOMMENDED RULING RE DISCIPLINE OF ERRANT POLICE OFFICERS BY BOARD OF POLICE COMMISSIONERS

INTRODUCTION

On July 13, 1990, the Court found that minority officers in the Bridgeport Police Department continue to suffer unequal and discriminatory treatment in the area of discipline. See, Recommended Ruling Re Board of Police Commissioners' Failure To Discipline Errant Officers In The Bridgeport Police Department. On November 15, 1990, the

Honorable T.F. Gilroy Daly, United States District Judge, adopted, affirmed and ratified the Recommended Ruling.[1]

Under the Ruling, the defendants were encouraged to eliminate the backlog in pending discipline cases and to develop a comprehensive plan to ensure that discipline would be meted out properly. As the defendants were recently advised:

> "An impartial, efficient and just handling of discipline cases will aid substantially in the establishment of an esprit de corps. Officers will know that they are under close supervision and will be held responsible for proper conduct under a system which provides them with adequate procedural safeguards.
>
> With a properly functioning system, the citizens of Bridgeport will understand that their complaints are properly considered, that the Office of Internal Affairs has made a professional investigation and that the action taken, whether discipline or exoneration, is fair and appropriate.
>
> The Chief, the Board of Police Comissioners and the Mayor must begin to understand that a well-disciplined Bridgeport Police Department serves the interests of both the public and

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[1] The defendants appealed the Ruling to the United States Court of Appeals for the Second Circuit. Bridgeport Guardians, Inc. v. Delmonte, Docket No. 90-9106. The appeal was withdrawn with a reservation of rights for reinstatement. See Attachment A hereto.

> Department members. Cronyism, laxness, laziness, inefficiency, incompetency, along with discrimination have no proper place in the Department's discipline process.
>
> Once the Department decides to establish a professional discipline system, it must be applied fairly across the board to all officers. Whether it be a firm, moderate or lenient system, minority officers must be treated by the same standards as majority officers."

Recommended Ruling On Complaint Dated March 16, 1990 of Officer Theophilus B. Meekins, dated October 10, 1990. Adopted, Approved and Ratified on November 14, 1990 by the Honorable T.F. Gilroy Daly, U.S.D.J.

DISCUSSION

The defendants have taken the Ruling of July 13, 1990 to heart. They have acted to reduce substantially the backlog of discipline cases. The members of the Board of Police Commissioners commendably devoted substantial amounts of time to the hearing of discipline cases.

In addition, the Mayor has appointed new members to the Board and a new Chairperson, Steven Habetz. Chairperson Habetz and the individual Board members have pledged themselves and the Department to resolving the discipline problems within the Department and to a long term resolution of the multitude of problems within the Department. These assurances are welcome and will be encouraged and supported.

Pursuant to the Ruling of July 13, 1990, the Board submitted a new disciplinary procedure which has been "negotiated by and between the City of Bridgeport and the Bridgeport Police Union". According to defendant's counsel, "the Board of Police Commissioners is filing this final procedure as its plan to eliminate the backlog" of discipline cases. A copy of the submission is attached hereto as Exhibit B.

After careful review, the procedure appears to resolve most, if not all, of the previously identified issues concerning discipline. The Guardians, on March 11, 1991, correctly observed that "the plan does not answer the question whether the Board will be unable to conclude each pending discipline matter within a reasonable time frame." See Attachment C hereto. According to the Monthly Discipline Report - February 1991 eight cases were pending. The charges concerned two (2) 1989 incidents and six (6) 1990 incidents. A copy of the Report is attached hereto as Exhibit D. A review of the report discloses that five (5) Whites, two (2) Blacks and one (1) Hispanic are the subjects of the charges. Obviously, the Board has made great progress in eliminating many of its problems with the processing of disciplinary cases.

However, the Guardians concerns are meritorious given the historical background of the case. While this history should not cloud the hard work and good intentions of the present Board and its hardworking members, it counsels caution in the approval of new procedures.

The new procedure is hereby approved on an interim basis for a period of twelve (12) months. The Board is

directed to implement the procedure immediately. The Board will be given the appropriate and necessary flexibility in the exercise of its power to supervise the Bridgeport Police Department. The Board is directed to continue to file the monthly discipline reports until further order of this Court. In addition, the Department is directed to continue to file its regular quarterly reports on Company discipline.

Given the new procedure, the Court fully expects that discipline cases will no longer pend for periods longer than three (3) months. The future monthly discipline reports should include the date the charges were prepared initiating Board action. The Court has every confidence that Chairperson Habetz and the Board will resolve the pending cases expeditiously.

Absent from the Board's plan is a component dealing with the investigation and processing of discipline cases prior to presentation to the Board. Clearly the major resource for this function within the Bridgeport Police Department is the Office of Internal Affairs. To ensure that errant police officers are disciplined in a fair, efficient and non-discriminatory fashion, the Board is ordered to submit for review and approval the procedure under which the Office of Internal Affairs will operate in the investigation of charges against Bridgeport police officers. The procedure should be submitted by May 1, 1991.

In the submission, the Board should articulate any limitations or restrictions imposed on the Office of Internal Affairs' ability to perform its function. The Board is specifically directed to advise as to its position on and response to the decision by the State of Connecticut

Department of Labor State Board of Mediation and Arbitration In the Matter of City of Bridgeport and AFSCME, Council #15, Local 1159, Case No. 9091 - A - 91, dated March 6, 1991. Specifically, the Board should advise whether the Office of Internal Affairs is limited to investigating errant police behavior in situations wherein a citizen has filed a sworn complaint.

Dated at New Haven, Connecticut, this 26 day of March, 1991.

/s/_____
William H. Glendenden, Jr.
Special Master
P.O. Box 1729
New Haven, CT. 06507
203/787-1183

EXHIBIT A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIDGEPORT GUARDIANS, INC.

VS. DOCKET NO. 90-9106

DELMONTE

The undersigned counsel for the parties hereby stipulate that the above-entitled appeal is hereby withdrawn without costs and without attorneys' fees and without prejudice, subject to reinstatement by written notice to the Clerk of this Court by appellant's counsel by thirty (30) days of an order by the District Court setting a date by which the defendants must eliminate any backlog of discipline cases or face sanctions; and if not thus reinstated, shall be deemed withdrawn with prejudice.

Attorney For Appellant
Thomas K. Jackson
Office of the City Attorney
202 State Street
Bridgeport, Ct. 06604

Attorney For Appellee
Vincent M. Musto
Koskoff, Koskoff & Beider, P.C.
350 Fairfield Avenue
Bridgeport, Ct. 06604

Dated: January , 1991

SO ORDERED

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

[Filed: April 22, 1991]

CIVIL ACTION NO. B78-175 (TFGD)

THE BRIDGEPORT GUARDIANS, INC.,)
ET AL.)
Plaintiffs,)
)
v.)
)
ARTHUR J. DELMONTE, ET AL)
Defendants.)
/

SUPPLEMENTAL RECOMMENDED RULING RE DISCIPLINE OF ERRANT POLICE OFFICERS BY BOARD OF POLICE COMMISSIONERS

// MARGINAL ENTRY ORDER
BY T.F. GILROY DALY, U.S.D.J. //

APRIL 22, 1991. Civ. No. B-78-175 (TFGD)

After careful review, and absent objection, the Recommended Ruling of the Special Master is hereby APPROVED, AFFIRMED and RATIFIED.

SO ORDERED.

/s/_____
T.F. Gilroy Daly, U.S.D.J.

APPENDIX K

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

[Filed: July 16, 1990]

CIVIL ACTION NO. B78-175 (TFGD)

THE BRIDGEPORT GUARDIANS, INC.,)
ET AL.)
Plaintiffs,)
)
v.)
)
ARTHUR J. DELMONTE, ET AL)
Defendants.)

RECOMMENDED RULING RE BOARD OF POLICE COMMISSIONERS' FAILURE TO DISCIPLINE ERRANT OFFICERS IN THE BRIDGEPORT POLICE DEPARTMENT

INTRODUCTION

Almost ten years after the original decision in this case, substantial problems exist in the discipline of police officers by the Bridgeport Police Department. On May 2, 1990, the Special Master invoked paragraph 10b of the Remedy Order dated January 6, 1983. A hearing was held on May 16, 1990 to investigate and receive evidence concerning

possible violations of Judge Daly's decision filed November 23, 1982 and the subsequent orders and ruling herein.

In the original suit, The Bridgeport Guardians, Inc. claimed that "black officers, because of their race, are brought up on disciplinary charges more often and subject to harsher sanctions than white officers." The Bridgeport Guardians, Inc. v. Delmonte, et al, 553 F.Supp. 601, 613 (D. Conn. 1982). After reviewing evidence covering a sample period of January 1, 1976 to May 19, 1978, Judge Daly found that "[t]hese statistics strongly suggest that departmental regulations are discriminatorily applied and that disciplinary sanctions are discriminatorily imposed depending on the color of an officer's skin." Id. And,

> [t]he clear inference to be drawn from the cited examples as well as from the statistics indicating that a far greater percentage of black officers than white officers have been subjected to disciplinary proceedings, is that defendants intentionally discriminated on the basis of race in the amount and kind of discipline meted out to its officers. Id. at 614.

Based on the evidence, Judge Daly concluded, "[p]laintiffs have clearly proved that defendants intentionally discriminated on basis of race in the number, kind and severity of disciplinary actions they take against black officers in the department." Id.

On August 15, 1988, discipline imposed on Officer William Bailey by the Board of Police Commissioners was set aside because of concerns that the discipline imposed on

Officer Bailey differed from discipline imposed on similarly situated white officers and that Officer Bailey's hearing was held more promptly than hearings for similarly situated white officers.[1] The Board of Police Commissioners was directed to reconsider the discipline imposed on Officer Bailey.

During the course of the Bailey proceedings, the defendants represented they had made a new beginning to modernize the Department As part of this "new beginning", the defendants assured the Special Master that the Board would promptly discipline any police officer who did not abide by departmental rules and regulations. In addition, the defendants reconfirmed that all discipline imposed would be nondiscriminatory and fairly meet the offense. Based on these assurances, the defendants, representations of good faith in reconsidering Officer Bailey's discipline, the severity of the offense and Officer Bailey's admission of misconduct, the Board of Police Commissioners was allowed to reimpose the same discipline on Officer Bailey.

Unfortunately, the Board's post-Bailey behavior was not a "new beginning", but rather a return to business as usual. Based on the evidence adduced at the hearing on May 16, 1990, it is clear that the Board of Police Commissioners has not promptly disciplined police officers violating departmental rules and regulations. In addition, the likelihood

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[1] Familiarity with the recommended rulings dated August 15, 1988, August 19, 1988, October 4, 1988, and July 14, 1989 will be assumed and reference to them should be had for a complete discussion of the facts and issues presented in the Bailey proceedings.

that minority officers would face discipline before the Board more frequently than similarly situated white officers substantially increased. Minority officers also face a significantly quicker imposition of discipline by the Board than do similarly situated white officers.

In short, the Board of Police Commissioners has failed to comply with Judge Daly's ruling of November 28, 1982, the representations made in conjunction with the Bailey proceedings and its own rules and regulations.

DISCUSSION

From January 1, 1986 to February 24, 1988,[2] the Board of Police Commissioners completed thirty one discipline cases. Eighteen (58%) involved white officers. Of the remaining 42%, eight (26%) involved black officers and 5 (16%) were Hispanic officers.

Subsequent to Bailey, the Board completed 15 cases. Three (20%) involved white officers and twelve (80%) involved minority officers. Of the 80%, 5 involved black officers and 7 were Hispanic officers.[3]

At the prodding of the Special Master during the Bailey proceedings, the Board on October 5, 1988, adopted

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[2] The Board imposed its initial discipline on Officer Bailey on February 24, 1988.

[3] As of May 16, 1990, the Bridgeport Police Department had 369 officers. 128 (35%) were minority officers.

policies designed to eliminate the recurrent problem of delays in processing discipline charges. Specifically, the Board announced that it "will take the necessary steps to insure that the time between the initial charging of an officer for violation of Departmental Rules and Regulations and the conclusion of the administrative hearing before the Board of Police Commissioners will be as short as possible."

The Board has completely failed to adhere to this policy. Charges have been pending against four police officers for well in excess of a year. Charges against 9 officers have been pending for more than 6 months. The Board had little control of its docket of cases or any effective handle on the discipline process during the post-Bailey period.

During the post-Bailey period the Board spent an *excessive* amount of time hearing a case involving 5 minority officers. While *the* Board was hearing these charges, equally serious charges against white officers were ignored. For example, Officer Wargo, the current union president, was charged with violation of the deadly force policies on August 18, 1988. While these charges predated those against the five minority officers, Wargo's charges were unresolved as of May 16, 1990. On May 27, 1988, Officer Dolan, another white, was charged with larceny. His charges were also unresolved as of May 16, 1990. On July 6, 1989, Officer Kubel, another white, was also charged with larceny. He was allowed to wait until December 23, 1989 to retire in lieu of a hearing before the Board.[4]

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[4] The reason Officer Kubul appeared before the Board at this time was an agreement allowing him to retire rather than face

At the October 5, 1988 Board hearing, the Board in response to an order entered herein, acknowledged that they had reviewed the portion of JudGe Daly's decision concerning the Department's discrimination in disciplinary actions. Id., 553 F. Supp at 613-614. The Board stated that "it has and will continue to be ever vigilant for signs of obvious or subtle discrimination against members of the Department whether in disciplinary matters or in any other operation of the Department."

The evidence demonstrates that minority officers are brought before the Board when they are charged with violations of departmental rules and regulations both more frequently and more quickly than similarly situated white officers. From November 14, 1988 to December 5, 1989, the Board imposed no discipline and scheduled but one matter -- the case of alleged excessive use of force which occurred on November 2, 1988, involving the five minority officers. Although the case was obviously a significant matter, it was not substantially more serious than the case against Officer Wargo which involved the use of deadly force. In spite of the fact that the Wargo incident occurred nearly three months before the incident involving the five minority officers the minority officers were rushed before the Board while Officer Wargo's case was ignored.

Similarly, other incidents involving white officers who are alleged to have used deadly force have been slow to come before the Board. For example, Officer Robert Novia faces charges concerning the improper use of deadly force. No

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prosecution.

hearing has been scheduled in this matter. Officer Brian McCarthy faced charges of firing at a moving vehicle on March 1, 1990. The hearing in the McCarthy case was scheduled for a date nearly three months after the incident. This contrasts with the treatment of Officer Bailey who was also accused of firing at a moving vehicle. Officer Bailey was suspended shortly after the incident involving him. In contrast, Officer McCarthy was made an Acting SerGeant. Officer Bailey's case was brought before the Board in twenty-four days. Officer McCarthy,s case took seventy-five days to reach the Board.

The Board and Department have offered that the major reason for the backlog in discipline cases was the amount of time devoted to the hearings involving the five minority officers. However, it is clear from the testimony of the Commissioners and the Department officials involved in the disciplinary process that no effort was made to determine the extent of this backlog until very recently. Indeed, at the hearing more than one Commissioner expressed "surprise" at the enormity of the backlog of discipline cases. Despite the existence of the backlog, no disciplinary matters came before the Board between December 5, 1989 and April 30, 1990. The Board's Mission Statement and Goals adopted for the period January 1990 to December 1991 failed to mention, much less address, the discipline crisis. This hardly evinces a Board dedicated to resolving disciplinary matters promptly.

Lt. Donovan, the Board of Police Commissioners' in-house advocate, candidly conceded that the Department's discipline system had broken down. He also acknowledged that the delays have an adverse impact on the Board's ability

to prosecute and discipline errant officers. Acting Chief Izzo concurred in Lt. Donovan's assessment.

Under the BridGeport City Charter, the responsibility for the operation of the BridGeport Police Department clearly resides in the Board of Police Commissioners. Charter of City of BridGeport, Chapter 17, Section 230; Code of Ordinances City of BridGeport, Section 26-29. The Board must take full responsibility for the breakdown of the Department's disciplinary process. Given the proceedings in this case and related cases such as Dubosz v. Delmonte, 509 F.Supp. 964 (D. Conn. 1981) (later opinion November 21, 1984), the defendants' pleas of ignorance, negligence inattention, etc are disingenuous.[5] After more than a decade of litigation, minority officers in the Bridgeport Police Department continue to suffer unequal and discriminatory treatment. Based on all of the evidence, it is clear that the defendants have wllfully and intentionally disregarded the plaintiffs, rights.

CONCLUSION AND REMEDY

The Board has once again asked that its professions of good faith and fairness be taken at face value. The time has Come for clear and unequivocal actions by the Board to comply With the orders herein and its own policies.

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[5] These findings do not implicate Associate City Attorney Thomas K. Jackson. Throughout, Attorney Jackson has been forthright and candid and has sustained high professional standards.

Within thirty days the defendants are to file with the Clerk of the Court, the Special Master and the plaintiffs a written plan to eliminate the backlog of disciplinary cases by October 19, 1990. If any case cannot be concluded by October 19, 1990 for good and sufficient cause, the Special Master shall be notified in writing as soon as the problem is identified. The notification shall describe the case, the reason(s) for the delay and the good cause for the extension required. The plaintiffs shall also be provided with a copy of the notification.

The Board shall file with the Clerk of the Court, the Special Master and the plaintiffs a written monthly progress report stating the cases concluded, with a detailed statement of the outcome, cases with hearings in process, cases scheduled and cases awaiting scheduling. This report shall be filed on or before the fifteenth of each month.

Each month with the progress report the Board shall file with the Clerk of the Court and the Special Master an updated version of Exhibit 32. At a minimum the report shall include the following information:

a) Name, race, and sex of the officer;

b) A description of the charges;

c) Classification of the charges as major or minor;[6]

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[6] The priority assignment code used in the preliminary status report dated June 30, 1990 is acceptable and should be employed.

d) The dates of the incident and of the charges;

e) The progress of the charges;

f) Hearing date or dates (if any);

g) Disposition of charges.

In the event that the backlog of discipline cases is not eliminated by October 19, 1990, or such later date as may be ordered herein, the defendants shall be subject to a sanction of $1,000 for each additional day taken to eliminate the backlog. Compare Dubosz v. Delmonte, supra. In addition, the individual Board members will be ordered to show cause why they should not be suspended from their offices in the event the deadline is not met.

The Board should not fear these sanctions if they will conscientiously perform their sworn duties. The fact that four of the board members took office in January 20, 1990 has been Given due consideration. Also taken into consideration is the Board's recent attention to the discipline problem in response to paragraph 10b investigation.

Repeatedly, the Board has been encouraged to remedy the problems of discrimination in the Department. Repeatedly, the plaintiffs have had to seek court intervention to compel the defendants to do their Jobs. The time for pronouncements and self-congratulation is over. It is time to act.

Counsel for the Bridgeport Guardians, Inc. is entitled to an award of attorney's fees under the prevailing party doctrine for the able assistance provided during this

proceeding. Counsel for the parties should confer on the question of a reasonable fee and report to the Special Master within thirty days. In the absence of an agreement, an application should be submitted within forty-five days in the usual form.

Dated at New Haven, Connecticut this 13 day of July, 1990.

/s/_____
WILLIAM H. CLENDENEN, JR.
Special Master

APPENDIX L

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

[Filed: February 20, 1991]

CIVIL ACTION NO. B78-175 (TFGD)

THE BRIDGEPORT GUARDIANS, INC.,)
ET AL.)
Plaintiffs,)
)
v.)
)
ARTHUR J. DELMONTE, ET AL)
Defendants.)

RECOMMENDED RULING ON COMPLAINT DATED APRIL 11, 1990 OF OFFICER JOE ANN SIMMONS

On April 11, 1990, Officer Joe Ann Simmons filed a complaint pursuant to paragraph 10 of the Remedy Order of 6, 1983 alleging discriminatory treatment by the Bridgeport Police Department. The complaint seeks a transfer e command of Captain William Giblin, removal of Acting Sgt. James Halpin from his assignment in charge of line-up inspection, the imposition of discipline on any Bridgeport Department member who has discriminated against Officer along with costs and a reasonable attorney's fee.

Pursuant to the Remedy Order and the Order of February 4 establishing the procedure for handling complaints under paragraph 10, the complaint was assigned to the...

APPENDIX M

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

[Filed: January 12, 1984]

CIVIL ACTION NO. B78-175

THE BRIDGEPORT GUARDIANS, INC.,)
ET AL.)
Plaintiffs,)
)
v.)
)
ARTHUR J. DELMONTE, ET AL)
Defendants.)

SPECIAL MASTER'S RECOMMENDED PROCEDURE FOR RESORT TO SPECIAL MASTER PURSUANT TO PARAGRAPH 10 OF THE REMEDY ORDER OF JANUARY 7, 1983

In a Remedy Order dated January 7, 1983, the Court appointed a Special Master to review complaints of racial discrimination against Black officers in disciplinary actions and working conditions, and disqualification of Black officers from promotional opportunities.

On November 28, 1983, at a status conference, counsel for the plaintiffs and the defendants met with the

Special Master to discuss a procedure for the review of complaints of racial discrimination against Black officers in disciplinary actions and working conditions, and disqualification of Black officers from promotional opportunities. Counsel for the respective parties have agreed to items one (1) through eight (8) of the recommended procedure.

Counsel for the defendants has proposed an additional item:

> "9. In the event a complaint is found by the Special Master to be entirely without merit and frivolous or merely filed for harassment purposes, the entire costs associated with that complaint, including but not limited to the Special Master's fees, costs for transcripts, costs of reproduction of documents and reasonable attorney's fees, shall be borne by the complainant."

On December 22, 1983, Counsel for the plaintiffs objected to proposed item 9 stating:

> "The cost-shifting proposal made as Paragraph 9 is an entirely different matter. The Court has appointed you to hear all complaints and this provision Would impermissibly discourage the filing of legitimate complaints. I believe that Title VII itself provides the protection Mr. Jackson Seeks: but, since the standard for fee-shifting has been subject to many developments in the case law, I think it

> inadvisable to make any particular formulation a matter of set procedure in this instance."

Upon due Consideration of the proposed item 9 and the objection, we believe that the plaintiffs, objection should be sustained. The defendants are provided under existing federal law with ample recourse against complaints "entirely without merit and frivolous or merely filed for harassment purposes."

Section 706(k) of Title VII of the Civil Rights Act of 1964 provides:

> "In any action or proceeding under this sub-chapter, the court, in its discretion may allow the prevailing party...a reasonable attorney's fee."

Title 42 USC §2000e-5(k). In Christiansburg Garmet Co. v. Equal Employment Opportunity Commission, 434 US 412, 422 (1978) Mr. Justice Stewart, speaking for the Court explained that under Section 706(k)

> "a plaintiff should not be assessed his opponent's attorney's fees unless a court finds that his claim was frivolous, unreasonable, or groundless, or that the plaintiff continued to litigate after it clearly became so. And, needless to say, if a plaintiff is found to have brought or continued such a claim in bad faith, there will be an even stronger basis for charging him with the attorney's fees incurred by the defense."

See Faraci v. Hickey-Freeman,Co., Inc., 607 F2d 1025 (2d cir. 1979); Prate v. Freedman, 583 F2d 42 (2d Cir. 1978); Fisher v. Fashion Inst. of Technology, 491 F. Supp. 879 (SD NY 1980). As in other litigation, a prevailing defendant under appropriate circumstances may obtain an award of costs against a plaintiff's attorney under 28 USC §1927. "Section 1927 provides that lawyers who multiply court proceedings vexatiously may be assessed the excess 'costs' they create." Roadway Express, Inc. v. Piper, 447 US 752, 757 (1980). Title 28 USC §1920 enumerates the other costs that ordinarily may be taxed to a losing party. See also Rule 37, Federal RUleS of civil Procedure; National Hockey League v. Metropolitan Hockey Club, 427 US 639 (1976); Charron v. Meaux, 66 FRD 64 (SD NY 1975); Stanziale v. First National City Bank, 74 FRD 557 (SD NY 1977); Chesa International, Ltd. v. Fashion Associates, Inc., 425 F Supp. 234, aff'd 573 F2d 1288 (2d cir. 1977).

The Special Master hereby recommends that the following procedures govern resort to the Special Master as to any complain under paragraph 10 of the Remedy order of January 7, 1983.

1. The complainant or his/her counsel shall give written notice to the Special Master and the Defendants, through the office of the city Attorney, of the incident or situation complained of, and shall file with the office of the City Attorney a discovery schedule setting forth all documents or files relevant to the complaint to which access is sought. The complaint shall state the incident complained of, the date and the name or names of the parties involved. The scope of such requests shall be governed by Rule 26(b) F.R.Civ. P. The complainant shall not be foreclosed from subsequent

access to information in the possession, custody or control of any of the Defendants.

2. The defendants shall comply with a complainant's requests for access to documents within thirty (30) days of receipt of the request. Any disputes concerning compliance shall be reported to the Special Master for resolution.

3. It is desirable that complaints be filed within thirty (30) days of the discrimination complained of; however, later filings shall not be disallowed upon a showing by the complainant of good reason for the complaint to be late.

4. within ten (10) days of receiving a complaint, the defendants, through the office of the city Attorney, shall transmit to the Special Master and to the complainant, or his/her counsel, copies of all department records which refer or relate to the incident at issue, including, but not limited to, the tape recording and transcript of any disciplinary hearing, investigation reports, statement of witnesses, and notices to the complainant.

5. The Special Master shall schedule a hearing as soon as practicable after compliance by the defendants with the plaintiffs' requests for documents or sooner, if the complainant so requests.

6. The Special Master shall impose such conditions for hearings as he determines are warranted to protect privacy, including redaction of documents at the hearing to conceal the identities of personnel whose discipline records may be put at issue.

7. If any party so requests, a hearing shall be recorded by a court stenographer or by any other reliable means to which the parties agree. The defendants shall bear the expense of such record.

8. At the hearing, the parties shall provide proposed findings of fact and recommended remedies to the Special Master, who shall make a recommendation to the court. The Special Master's recommendation shall be final and binding on the parties I unless it is rejected by the court on appeal as provided by the local rules for the District of Connecticut.

Respectfully Submitted

DATED: 1/9/84

/s/_____
WILLIAM H. CLENDENEN, JR.
Special Master
400 Orange Street
New Haven, Connecticut 06511

APPENDIX N

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

[Filed: January 14, 1983]

CIVIL ACTION NO. B78-175

THE BRIDGEPORT GUARDIANS, INC., et al.,
Plaintiffs,

v.

DELMONTE, et al.,
Defendants.

ORDER

In accordance with the Court's remedy order, issued on January 7, 1983, it is hereby

ORDERED that Mr. William Clendenen, Esq., 400 Orange Street, New Haven, Connecticut, is appointed as Special Master to perform all those duties specified in the Court's remedy order; it is further

ORDERED that the Office of the Clerk of the Court forward a copy of the Court's Memorandum of Decision and Remedy Order in the above captioned case to Mr. Clendenen.

Dated this 14th day of January, 1983, at Bridgeport, Connecticut.

/s/_____
T.F. Gilroy Daly, Chief,
United States District Judge

APPENDIX O

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

[Filed: January 7, 1983]

CIVIL ACTION NO. B78-175

THE BRIDGEPORT GUARDIANS, INC., ET AL.
Plaintiffs,

v.

ARTHUR J. DELMONTE, ET AL
Defendants.

REMEDY ORDER

After a full trial of the above matter, this Court has found that the defendants have violated Titles VI and VII of the Civil Rights Act of 1964, 42 U.S.C. § § 1981 and 1983, and 31 U.S.C. § 1242. Accordingly,

1. At least fourteen black police officers shall be appointed immediately to positions in the Tactical, Booking and Records Units and in the Police Athletic League, and such assignments shall continue for at least twelve months.

2. Plaintiffs Theophilus B. Meekins and Charles D. Smith, who suffered retaliation because of their association with the Guardians, shall be among the black officers so reassigned to one of the specialized divisions noted in ¶ 1.

3. Defendants, their officers, agents, and employees, shall at all times maintain assignments of black officers to positions in the specialized divisions of the Bridgeport Police Department ("B.P.D.") specified in ¶ 1 on all shifts such that the percentage of black officers so assigned is at least equal to the percentage of black officers in the department. Additionally, defendants shall, within 90 days of the date of this Order, establish a rotation system pursuant to which all patrol officers who desire such assignments will have equal access to assignments in the specialized divisions regardless of race, color, sex, religion, or nationality. Any rotation system shall be subject to the Court's approval and shall insure that the percentage of black officers assigned to the specialized divisions is at all times at least equal to the percentage of black officers in the department.

4. Defendants or their agents in the B.P.D. shall immediately reassign all black and Hispanic officers who are currently assigned to patrol sectors Red 40, 41, 42, 43 or Blue 14 or Green 35 and who have been so assigned for four months or more to assignments in either Amber 21, 24, 25 or Green 36 or 38 as these sectors were constituted at the time of trial. Additionally, as of 90 days from the date of this Order, the defendants shall establish a procedure, subject to approval by the Court for rotating patrol officers on a regular basis through all the geographical patrol sectors at regular intervals in such a manner that black and Hispanic officers are assigned to sectors Red 40, 41, 42, 43, Blue 14 and Green 35 in no

greater percentage than their overall percentage representation in the patrol division and in such a manner that they are assigned to Amber 21, 24, 25 and Green 36 and 38 in a percentage at least equal to their percentage of representation in the patrol division. No black or Hispanic officer who has served four months or more in Sectors Red 40, 41, 42, 43, Blue 14 or Green 35 in 1981 or 1982 shall be assigned to any of these sectors before July 30, 1984, except on a voluntary basis.

5. Plaintiff Arthur Carter, who suffered retaliation because of his association with the Guardians, shall be included among the black officers reassigned to Amber 21, 24 or 25 or to Green 36 or 38. He shall remain assigned to one of these sectors or to a specialized division until such time as an independent qualified physician shall certify that his health no longer makes a non-stressful assignment appropriate.

6. The defendants shall furnish plaintiffs' counsel, on a date 30 days from the date of this order, an accurate roster of the assignments of entry level officers as of that date and shall furnish such information every three months thereafter for a period of two years.

7. Defendants shall, within 90 days of the date of this Order, establish a pairing assignment procedure which will insure that officers are not paired on the basis of race in two-officer patrol assignments. Such procedure is subject to the approval of the Court.

8. Defendants, their officers, agents and employees, shall not discriminate on the basis of race in the initiation of

disciplinary charges or imposition of penalties for infractions of department rules.

9. Defendants, their officers, agents, and employees shall not subject any police officer to harassment, disciplinary action or different treatment of any kind because of such officer's race, color or membership in the Bridgeport Guardians, Inc. or because of his or her opposition to discriminatory practices within the department. Defendants, their officers, agents, and employees are specifically enjoined from engaging in any act or practice whose purpose or effect is to discriminate or retaliate against plaintiffs Smith, Carter or Meekins because of their race, association membership, or opposition to discriminatory employment practices.

10. A qualified, neutral Special Master shall be appointed by the Court[1] to:

> a) Review any and all disciplinary actions instituted against any black officer who claims such action is racially discriminatory in purpose or effect; and to recommend an appropriate adjustment in any such action found to be racially discriminatory as to initiation, severity of sanction or otherwise.
>
> b) Receive, investigate, and remedy all complaints of discriminatory treatment, racial

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[1] Each of the parties is requested to submit, within one week of the date of this Order, the names of three persons for the Court's consideration in appointing a Special Master.

harassment or slurs within the B.P.D. and, in appropriate cases, to bring disciplinary charges against those responsible and/or those supervisors who foster or permit such racial harassment to occur in violation of departmental rules.

c) Review any disqualification of any black officer seeking promotion which disqualification is based on grounds of any suspension, disciplinary action, or alleged misconduct upon which such sanction was premised occurring from 1978 to the date of this Order. Any actual or threatened disciplinary action found to have been racially discriminatory in either initiation or severity of sanction imposed shall not be grounds for disqualification from the taking of any promotional examination or actual promotion during 1983 or 1984.

Any fees of the Special Master shall be borne by defendants in their official capacity.

The Special Master's findings and/or recommendations in each of the areas specified may be appealed to this Court. The Master's findings and recommendations shall normally be accepted unless clearly erroneous. Fed.R.Civ.Pro. 53(e)(2). The party taking such appeal shall be liable for all costs, including attorney's fees, incurred in the taking of such appeal unless the appellant prevails on appeal.

11. Defendants shall immediately inform all supervisory personnel in the Bridgeport Police Department of the terms of this Order and shall take all steps necessary to insure that they effectuate compliance with this Order.

12. Defendants shall immediately notify each employee of the Bridgeport Police Department that department Regulations 61 and 62 are no longer in effect.

13. Defendants shall, effective 91 days from the date of this Order, be immediately enjoined from spending or using any federal funds, including revenue sharing funds, unless defendants can establish to the satisfaction of this Court that those portions of this Order requiring immediate action or action within 90 days (¶ 1, 2, 3, 4, 5, 6, 7, 8, 11, 12) have been fully complied with.[2]

14. This Court shall maintain continuing jurisdiction in this matter to insure complete and continuing compliance with all aspects of this Order.[3]

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[2] Cf. United States v. Chicago, 395 F. Supp. 329 (N.D.Ill.1975) Aff'd 525 F.2d 695 (7th Cir.1976) (preliminarily enjoining the disbursement of federal funds to municipal police department with a history of racial and sex discrimination); United States v. Chicago, 411 F. Supp. 218, 245 (N.D.Ill.1976) (making the preliminary injunction permanent until the "City . . . brings itself into compliance with the requirements of law."), aff'd on that point, modified on other grounds, 549 F.2d 415, 439-42 (7th Cir.) cert. denied, 434 U.S. 875 (1977).

[3] Plaintiffs claim for "compensatory damages incidental to equitable relief" for the humiliation suffered by them as a result of

racial slurs and disparagement permitted by defendants is denied for two reasons: First, the evidence adduced at trial does not establish any basis for computing damages or for particular entitlement to damages. Second, such damages unlike backpay, are clearly legal, not equitable, in nature, and this Court granted plaintiffs' motion to strike defendants' jury demand in part because plaintiffs amended their complaint by abandoning their claim for damages. Since neither the named plaintiffs nor any member of the class they represent are entitled on the evidence in this case to backpay, no monetary damages can be awarded.

In addition, plaintiffs requested reinstatement of Officers Bish and Grimes is also denied. This Court made no specific finding that defendants acted unlawfully in their treatment of Bish and Grimes. Rather, the treatment of those two officers, as compared to white officers, was cited merely as examples of the disparity between disciplinary actions taken against black officers and white officers. As noted in the Memorandum of Decision, this Court does not indicate approval of any of the conduct with which any of the officers cited as examples were charged. The fact that white officers may have "gotten away" with conduct for which they perhaps should have been terminated does not require this Court to order reinstatement of black officers who may have been more harshly, but, perhaps, more appropriately punished. Moreover, the complaint in this action never raised the issue of reinstatement of Bish and Grimes. Messers Bish and Grimes were not precluded from seeking reinstatement through union grievance procedures, EEOC administrative remedies or individual court action. Indeed, barring statute of limitations problems, there may be avenues still open to them. Perhaps most importantly, the record in this case, based on the evidence presented at trial, simply does not justify the reinstatement of Bish and Grimes by this Court.

15. The plaintiffs, having prevailed in this action, are entitled to an award of attorney's fees and costs in an amount to be determined in a separate proceeding.

It is So Ordered.

Dated at Bridgeport, Connecticut this 6th day of January, 1983.

/s/_____
T.F. Gilroy Daly, Chief Judge
United States District Court

APPENDIX P

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

[Filed: November 23, 1982]

CIVIL ACTION NO. B78-175

THE BRIDGEPORT GUARDIANS, INC., THEOPHILUS B. MEEKINS, CHARLES D. SMITH, AND ARTHUR CARTER,
Plaintiffs,

v.

ARTHUR J. DELMONTE, JOHN DEVINE, JOHN C. O'LEARY, FRANK DELAQUILA, LARRY HARRIS, JR. ROBERT BRUNO and JAMES McCARTHY, individually and in their capacity as Police Commissioners of the City of Bridgeport; and the CITY OF BRIDGEPORT,
Defendants.

MEMORANDUM OF DECISION

The Bridgeport Guardians, ("Guardians"), an organization of police officers within the Bridgeport Police Department ("B.P.D.") and the three named plaintiffs, each

a Black police officer in the B.P.D. and a present or former officer of the Guardians, have brought this action against the Bridgeport Police Commissioners and the City of Bridgeport, pursuant to 42 U.S.C. § § 1981 and 1983; Title VI and Title VII of the 1964 Civil Rights Act, 42 U.S.C. § § 2000d et seq. and 2000e, et seq.; the State and Local Fiscal Assistance Act, 31 U.S.C. § 1242(a); and the first, thirteenth and fourteenth amendments to the United States Constitution. Plaintiffs seek declaratory and injunctive relief, as well as compensatory damages on their own behalf and on behalf of others similarly situated from what they claim is unlawful employment discrimination in the Bridgeport Police Department. In addition, plaintiffs allege that defendants by enacting and maintaining in force impermissibly broad departmental regulations violate plaintiffs' right of freedom of speech.

This Court has jurisdiction pursuant to 28 U.S.C. § § 1331, 1334 and 2201; 42 U.S.C. § 2000e-5(f); and 31 U.S.C. § 1244(a).

The following facts are uncontested.

The plaintiff, Bridgeport Guardians, Inc., ("Guardians"), as noted, supra, is an association of police officers in the Bridgeport Police Department ("B.P.D."), which has as one of its purposes the promotion of equal employment opportunity and the prevention of illegal employment discrimination in the B.P.D. The plaintiffs Arthur Carter, Theophilus B. Meekins, and Charles D. Smith are Black police officers employed in the Patrol Division of the B.P.D.

The defendant City of Bridgeport is the employer of police officers in the Bridgeport Police Department, which in turn is administered, pursuant to the City's charter, by the Board of Police Commissioners.

The defendants Arthur Delmonte, John Devine, John C. O'Leary, Frank Delaquila, Larry Harris, Jr., Robert Bruno, and James McCarthy were all members of the Board of Police Commissioners during the time in question.

The City of Bridgeport received in 1978-79, and currently receives, federal revenue sharing funds and other federal financial assistance which it uses to pay for B.P.D. health insurance benefits as well as other activities of the B.P.D.

In 1978, plaintiffs filed administrative charges of discrimination against the defendants regarding the alleged instances of discrimination against minority police officers which are at issue in this suit, with the U.S. Department of Justice; the U.S. Office of Revenue Sharing; and the Connecticut Commission on Human Rights and Opportunities. The Connecticut Commission on Human Rights and Opportunities, as is its practice, filed copies of the plaintiffs charges on plaintiffs' behalf with the federal Equal Employment Opportunity Commission ("EEOC"), and on June 19, 1980, the U.S. Department of Justice issued to plaintiffs a Notice of Right to Sue in connection with their EEOC charge. (Plaintiffs' Ex. 2.)

I. Employment Discrimination Claims

Plaintiffs have alleged that defendants have discriminated against minority police officers in violation of *42 U.S.C.* § § *1981* and 1983; Title VI and Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000d, et seq. and § 2000e, et seq. (hereinafter "Title VI" and "Title VII"); the State and Local Fiscal Assistance Act, 31 U.S.C. § 1242(a).

Since the standards of proof for establishing claims of employment discrimination under the cited statutes differ, the Court turns first to a review of the applicable law.

Claims of employment discrimination on account of race may arise in two different ways. The claim may be based on an allegation that the employer simply treats members of the protected class less favorably than white persons. This type of claim has been referred to as a "disparate treatment" claim. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973). Or, the claim may be based on an allegation that a practice or policy, neutral on its face, in fact impacts more harshly on the protected class than on members outside that class. This is known as a "disparate impact" claim. Griggs v. Duke Power Co., 401 U.S. 424, 91 S. Ct. 849, 28 L. Ed. 2d 158 (1971). See also International Brotherhood of Teamsters v. United States, 431 U.S. 324, 335-36, n. 15,(1977).

To establish a "disparate treatment" claim of racial discrimination under Title VII of the 1964 Civil Rights Act,[1]

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[1] The relevant portion of the statute provides as follows:
"(a) It shall be an unlawful employment practice for an employer --

plaintiffs must prove not only that they were treated differently and less favorably than similarly situated white employees, they must also prove that such different treatment was prompted by a discriminatory intent on the part of the employer -- that is, that the employer treated them differently because of their race. Teamsters, supra. Of course, in some situations, discriminatory motive may be inferred from the mere fact of differences in treatment. Schwabenbauer v. Board of Education of City School District of Olean, 667 F.2d 305 (2d Cir.1981).

To establish a "disparate impact" claim of racial discrimination under Title VII proof of discriminatory motive or intent is not required. Teamsters, supra; Schwabenbauer, supra.

The same standards apply to discrimination claims brought under the State and Local Fiscal Assistance Act, 31 U.S.C. § 1242.[2] United States v. City of Chicago, 549 F.2d

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(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin."

[2] The antidiscrimination provision of the State and Local Fiscal Assistance Act provides as follows:

415, 439-40 (7th Cir.1977), cert. denied, 434 U.S. 875, 98 S. Ct. 225, 54 L. Ed. 2d 155 (1977); United States v. City of Buffalo, 457 F. Supp. 612, 619 (W.D.N.Y.1978), modified on other grounds, 633 F.2d 643 (2d Cir.1980). See also 31 C.F.R. § 51.53(b).[3]

However, to establish a constitutionally-based claim of employment discrimination, proof of discriminatory intent is required regardless of what theory -- treatment or impact -- is used. Washington v. Davis, 426 U.S. 229, 96 S. Ct. 2040, 48 L. Ed. 2d 597 (1976). The Supreme Court recently held that 42 U.S.C. § 1981[4] "like the Equal Protection Clause, can

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"No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under subchapter I of this chapter."

[3] The cited regulations adopt the E.E.O.C. guidelines established pursuant to Title VII.

A threshold requirement of an action brought pursuant to the State and Local Fiscal Assistance Act is, of course, that defendant be a recipient of federal funds which are used for employment purposes. *See Association Against Discrimination in Employment v. Bridgeport, 647 F.2d 256 (2d Cir.1981).* As noted, *supra*, that fact is not contested here.

[4] That statute provides:
"All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons

be violated only by purposeful discrimination." General Building Contractors Assoc., Inc. v. Pennsylvania et al., 458 U.S. 375, 102 S. Ct. 3141, 73 L. Ed. 2d 835 (1982). Similarly, in discrimination suits brought pursuant to 42 U.S.C. § 1983,[5] proof of discriminatory intent is also required. Personnel Administrator v. Feeney, 442 U.S. 256, 99 S. Ct. 2282, 60 L. Ed. 2d 870 (1979); Knight v. Nassau County Civil Service Commission, 649 F.2d 157, 161 (2d Cir.1981). Thus, proof that an official action or policy has a discriminatory effect or impact is insufficient to establish a claim under § 1981 or 1983; there must also be proof that that action or policy was racially motivated, that is, that it was prompted by a discriminatory purpose.

Such an invidious discriminatory purpose, however, in some cases may be inferred from the simple fact or extent of the impact on members of the protected class. See Washington, supra, 426 U.S. at 242, 96 S. Ct. at 2049;

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and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

[5] That statute provides in pertinent part:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . ."

Teamsters, supra, 431 U.S. at 335-36, n. 15, 97 S. Ct. at 1854-55, n. 15.

Proof of discriminatory intent or purpose, regardless of the theory employed, is also required for claims brought against public employers under Title VI of the 1964 Civil Rights Act.[6] Lora v. Board of Education of the City of New York, 623 F.2d 248, 250 (2d Cir.1980).

In cases alleging employment discrimination, the burdens of proof vary depending upon which theory the claim is based. To establish a prima facie disparate-treatment case, brought under any of the cited statutes, plaintiffs must present evidence to establish that they were treated less favorably than other similarly situated employees and that they were so treated because of their race.[7] The latter element -- the employer's discriminatory intent or motive or purpose -- may be shown by direct evidence, if such exists, or by circumstantial evidence, including evidence of the difference in treatment itself, from which an inference of an unlawful motive may be drawn. As already noted, "proof of discriminatory motive . . . can in some situations be inferred

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[6] the pertinent portion of Title VI provides:

"No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d.

[7] See McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) which set forth a framework for establishing a disparate treatment claim.

from the mere fact of differences in treatment." Schwabenbauer, supra, 667 F.2d at 309. Once the plaintiffs have established a prima facie case of racially discriminatory treatment, the burden shifts to the employer to show a non-race based motive for its treatment of the plaintiffs. McDonnell Douglas Corp. v. Green, supra, 411 U.S. at 802, 93 S. Ct. at 1824. If the employer makes such a showing, the plaintiffs must then be afforded an opportunity to show that the reason articulated by the employer is, in fact, merely a pretext for discrimination. McDonnell Douglas Corp., supra, 411 U.S. at 804.

To establish a prima facie "disparate-impact" claim under Title VII or the State and Local Fiscal Assistance Act, plaintiffs must present evidence that the challenged policy or practice has a racially-discriminatory effect. Once a discriminatory effect is demonstrated, the burden then shifts to the employer to demonstrate that the practice or policy has a "manifest relationship to the employment in question" or that it is justified by business necessity. Griggs v. Duke Power Co., 401 U.S. 424 (1971). If the employer meets his rebuttal burden, the burden shifts back to the plaintiff who may attempt to show that a different policy or practice would equally well serve the employer's business needs without the prohibited racial effect. See Albemarle Paper Co. v. Moody, 422 U.S. 405 (1975).

However, to establish a prima facie "disparate-impact" case brought pursuant to 42 U.S.C. § § 1981, 1983 or Title VI of the 1964 Civil Rights Act, plaintiffs must prove, as noted above, not only the discriminatory effect of the challenged policy but also the discriminatory purpose or intent of the employer, which, as previously noted, may often be

inferred from the extent of the effect or impact. As with a discriminatory-treatment claim, the employer may then attempt to rebut plaintiffs prima facie case by showing that the practice in question was based on a non-racially-based motive or purpose.

Again, as in a disparate-treatment case, plaintiffs must then be given the opportunity to show that the employer's stated reason is merely a pretext for discrimination. This plaintiffs may do by persuading the trier that a discriminatory reason more likely is the basis for the challenged practice, or that the employer's explanation is unworthy of credence.[8] Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981).

The controlling principles of law relating to the standards and burdens of proof involved in actions brought pursuant to Title VI and VII of the 1964 Civil Rights Act; 42 U.S.C. § § 1981 and 1983; and the State and Local Fiscal Assistance Act having been set forth, the Court turns to the specific claims at issue here.

A. Discrimination in Job Assignments

Plaintiffs' claim of discrimination in job assignments is three-pronged: First, it is alleged that defendants unlawfully exclude black officers from assignment to the more prestigious specialized divisions of the police department,

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[8] Evidence that the policy or practice is not job-related or justified by business necessity could be relevant to the issue of pretext. Cf. Albemarle Paper Co. v. Moody, 422 U.S. 405 (1975).

restricting them almost exclusively to the less skilled, less prestigious assignment of patrol. Second, plaintiffs claim that defendants unlawfully discriminate against minority officers in geographic assignments. And third, plaintiffs claim that defendants have practiced racial segregation of black officers within the patrol division by pairing them on the basis of race and by allowing white officers to avoid being paired with black officers. The Court will address each of these claims in turn.

1. Assignments to Specialized Divisions

The evidence presented at trial established the following facts:

The Bridgeport Police Department encompasses several different divisions. Patrol, the largest division, is responsible for the routine work of patrolling the City and enforcing the laws through crime prevention and the apprehension of suspected violators. All but one of the 33 black police officers in the B.P.D. are assigned to patrol. The B.P.D. also has several specialized divisions which, in addition to being generally more prestigious and/or less stressful than Patrol, afford greater opportunities to gain experience and skills that contribute both to job satisfaction and to the possibility of advancement. (Tr. 34, testimony of Arthur Carter.) The specialized divisions include Tactical, Records, Booking, Police Athletic League, Special Services and the Youth Bureau. Entry-level patrol officers may be assigned to all the specialized divisions except the last two (Special Services and Youth Bureau), and, until 1979, when the Connecticut Department of Labor ruled that only

supervisory personnel could work in those two divisions, entry-level officers were assigned there as well.

Although there have been anywhere from 11 to 41 officers assigned to Tactical at various times since 1974 no black officer has, during that entire time, been assigned to that division. (Plaintiffs' Ex. 15, paras. 274-276;[9] Plaintiffs' Ex. 16-18; testimony of Superintendent Walsh).

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[9] Plaintiffs' statistical evidence relating to the three job assignment discrimination claims, as well as some evidence relating to plaintiffs' other claims came in by way of Plaintiffs' Requests for Admissions (Plaintiffs' Ex. 15) which were directed to all defendants and to which the parties who remained defendants at the time of trial never responded. The matters contained in the Requests were thus ruled admitted and conclusively established for trial purposes pursuant to Fed.R.Civ.Pro. 36(a) and (b). In addition, defense counsel stated on the record that he agreed to have the admissions come in.(Trial Tr. p. 68.)

Supt. of Police Joseph Walsh, prior to being dropped as a defendant in the case pursuant to Owen v. City of Independence 445 U.S. 622 (1980), had responded to the Plaintiffs' Requests For Admission, although the Court notes that he did so nearly seven months after plaintiffs filed them, and thus, under Rule 36(a) his responses would be untimely and ineffective even as to him had he remained a defendant in the case. In any event, his responses are ineffective as responses for the parties who remained defendants at the time of trial.

The Court notes, nonetheless, that it has compared the responses filed by Supt. Walsh with the matters in the Requests for Admissions and, for the most part, except for minor deviations which would not affect the Court's decision in any event, his responses, by and large, confirm, rather than contradict, plaintiffs' evidence.

There are approximately 20 patrol officers assigned to the Records Division. (Plaintiffs' Ex. 15, paras. 277-78; Plaintiff's Ex. 16-18; testimony of Superintendent Walsh). Presently, there is only one black officer assigned to Records, and, although the evidence is somewhat mixed, there apparently have never been more than three black officers in the Records Division. (Plaintiff's Ex. 15, para. 278; Testimony of Superintendent Walsh.) Although some assignments to the more sedentary jobs in Records are made on the basis of physical disability, not all such assignments are made on that basis. (Testimony of Charles Smith.)

The evidence does not indicate how many officers are assigned to Booking or the Police Athletic League, but it does show that no black officer has ever been regularly assigned to either of those divisions. (Plaintiffs' Ex. 15, paras. 284-285, 287; Plaintiffs' Ex. 16-18) As with the Records Division, some but not all, assignments to Booking are apparently made on the basis of physical disability.

Prior to the Connecticut Labor Department's ruling in 1979, patrol officers were regularly assigned to the Special Services Division and the Youth Bureau. Yet, through May of 1978, except for in-service training sessions of no more than three days, no black officers were assigned to Special Services and no black officers were ever assigned to the Youth Bureau. (Plaintiffs' Ex. 15, para. 281; Plaintiffs' Ex. 16-18.).[10]

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[10] Plaintiffs made no claim and presented no evidence as to the presence or absence of Hispanic Officers in the Specialized Divisions, and, as to that, the Court makes no finding.

As previously noted, preliminary to the commencement of this suit, plaintiffs filed an administrative charge with the Federal Office of Revenue Sharing ("O.R.S."), alleging many of the same acts of discrimination as are presented in this case. In 1979, the O.R.S. issued its conclusion that defendants had violated the antidiscrimination provisions of the State and Local Fiscal Assistance Act, 31 U.S.C. § 1242(a), and the Public Works Employment Act of 1976, 42 U.S.C. § 6727 (Plaintiffs' Ex. 16, 17, 18.) The O.R.S. based its conclusion in part on its finding that "minorities are underrepresented and underutilized in all divisions except the Patrol Division".[11] (Plaintiffs' Ex. 16, Attachment, p. 5.) The O.R.S.'s report was admitted as evidence at trial pursuant to Fed.R. of Evid. 803(8). See Chandler v. Roudebush, 425 U.S. 840, 863, n. 39 (1976).

Assignments to the Special Divisions are made entirely at the discretion of Superintendent of Police Joseph Walsh and other supervisory officers, all of whom are white. (Testimony of Arthur Carter, Supt. Walsh.)

It is not clear whether the allegations regarding discrimination in job assignments should be treated as a

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[11] The O.R.S., found, additionally, that the B.P.D. unlawfully discriminates in its hiring and promotion practices; in assignments to geographical areas and radio-car partners, as well as in the initiation and severity of disciplinary actions against minority officers. (As to the last three matters, see discussion, infra).

disparate-impact or disparate-treatment claim.[12] However, the issue need not be resolved since where, as here, the method of assignment is essentially a discretionary decision of supervisory personnel, all of whom are white, and that discretion has been shown, as here, to have operated to virtually entirely exclude minority employees from certain jobs, the logical inference is that the employer intended to discriminate. See Williams v. Colorado Springs School District, 641 F.2d 835 (10th Cir.1981); Sledge v. J.P. Stevens & Co., Inc., 585 F.2d 625, 635 (7th Cir.1978), James v. Stockham Valves & Fittings, 559 F.2d 310 (5th Cir.1977).

Plaintiffs have thus clearly established a prima facie claim of intentional racial discrimination, under either a disparate impact or treatment theory, insofar as the assignments to the Specialized Divisions are concerned.[13]

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[12] It would depend, in part at least, on whether one focused on the method employed -- that is the discretionary manner of making assignments -- or the result of that method. Several courts have concluded that, where the practice in question is a discretionary decision by white supervisory personnel, disparate impact is the more appropriate theory. Williams, supra; Sledge, supra.

[13] The intentional nature of the discrimination is further established by the fact that defendants, since 1979, have been aware of the O.R.S.'s findings, and, despite numerous compliance negotiations between the City, the Department and the O.R.S., the defendants to date have done nothing to change the conditions or practices which the O.R.S. found to be discriminatory, and have, in fact, refused to execute two different compliance agreements prepared by the O.R.S. following negotiations with the City.

Defendants offered no evidence to rebut plaintiffs' statistics or the findings of the O.R.S. The only

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(Testimony of Arthur Carter, Supt. Walsh; Plaintiffs' Ex. 17 & 18.)

Furthermore, the Court agreed to take judicial notice of prior civil court actions involving the Bridgeport Police Department or its practices. In Bridgeport Guardians, Inc. v. Members of the Bridgeport Civil Service Commission, 354 F. Supp. 778 (D.Conn.1973) ("Guardians I"), aff'd in part, rev'd in part, and remanded, 482 F.2d 1333 (2d Cir.1973), then District Court Judge Jon O. Newman held that the hiring procedures of the B.P.D. were discriminatory. In Bridgeport Guardians v. Bridgeport Police Dept., 431 F. Supp. 931 (D.Conn.1977) ("Guardians II"), Judge Newman held that although the department's detective examination had a discriminatory impact on minority applicants , it was sufficiently job-related to pass muster under Title VII. Nonetheless, Judge Newman decried the fact that four years after his decision in "Guardians I," there were still no black or Hispanic supervisory officers in the department -- a situation which remains true today. In Bridgeport Housing Authority Police v. City of Bridgeport, B-77-130 (D.Conn.), Order of Feb. 14, 1980, this Court enjoined the City and the Police Department from using a promotional examination which, contrary to Judge Newman's order in "Guardians I," had not been validated and which had been shown in prior use to have an adverse impact on minorities.

The Court hopes, in setting forth the above history of litigation, to put this case in historical perspective. The prior cases also bear on the presence or absence of discriminatory intent on the part of defendants, since they were certainly forewarned of problems within the department. Yet every step forward appears to have been taken only after Court orders have issued, and defendants appear to have exhibited resistance, if not intranscience, to change in the department.

"explanation" offered by defendants for the absence of black officers in the Specialized Divisions was that some assignments to Booking and Records are made on the basis of an officer's physical inability to perform the more strenuous duties of Patrol. (Testimony of Supt. Walsh.) While such an explanation might be sufficient to rebut the evidence of discrimination in assignments to those two divisions, the nondiscriminatory nature of that explanation is belied by evidence that when Arthur Carter, one of the named plaintiffs here, was physically disabled, he was not assigned to Booking or Records, but rather was reassigned to a particularly stressful and dangerous patrol duty (see infra). Furthermore, such a rationale does not explain the absence of black officers in the other specialized divisions.

The Court thus holds that plaintiffs have established that defendants unlawfully and intentionally discriminated against black police officers on the basis of their race in assignments to the Specialized Divisions of the B.P.D. in violation of Title VI and Title VII of the 1964 Civil Rights Act; 42 U.S.C. § § 1981 and 1983; and the State and Local Fiscal Assistance Act, 31 U.S.C. § 1242(a).

2. Discrimination in Geographical Assignments

Plaintiffs claim that defendants disproportionately assign black and Hispanic officers to the high-crime, high-risk areas of the City, thereby subjecting them to greater danger and stress, more demanding duties and more onerous working conditions than white officers.

The City of Bridgeport is divided into approximately 18 sectors, each designated by a color and a number for

purposes of assignment of patrol officers. (Testimony of Arthur Carter.) Patrol officers receive the same rate of pay and benefits regardless of their assignment. Geographical assignments like assignments to the Specialized Divisions, are made by supervisory personnel, all of whom are white.

The sectors designated "Blue 14," "Green 35," "Red 41," "Red 42," and "Red 43" are low-income, high-crime areas of Bridgeport. These areas encompass, for the most part, densely populated areas with public housing projects or other multiple-family dwellings. Not only are a greater number of crimes committed in these sectors than in other areas of the city, but the crimes tend to be more serious and more often involve acts of physical violence. (Testimony of Arthur Carter.) It goes without saying that police officers assigned to any one of these areas experience a heavier workload as well as greater danger and stress than officers assigned to more affluent, lower-crime areas of the city.

The sectors designated "Amber 24," "Amber 25," "Green 38," are low-crime residential areas comprised of middle or upper-income one-family homes. "Amber 21" is a low-crime downtown business area; and "Green 36" is the sector designation of a patrol car which acts chiefly as a backup car for "Green 35" (one of the high-crime areas). (Testimony of Arthur Carter.) Assignment to any one of these sectors involves a lighter workload, less stress and less dangerous duties than assignments to any of the high crime areas. (Id.)

If assignments to the various patrol sectors were made without regard to race, it would be expected that minority patrol officers would receive roughly the same percentage of

the assignments to each of those areas as is reflected in their representation in the patrol force as a whole.

However, although minority officers (black and Hispanic) comprise only 19.1% (Plaintiff's Ex. 15, paras. 4-8) of the police department's patrol force, they are significantly over-represented in the high crime areas.

For example, although black officers comprise 11.9% of the patrol force, they have been assigned to 21.7% of the patrol assignments in Blue 14; 45.4% of the patrol assignments in Green 35; 60.7% of the patrol assignments in Red 41; 43.7% of the patrol assignments in Red 42; and 47.9% of the patrol assignments in Red 43, all of which, as noted above, are high-crime areas with a greater, more dangerous and stressful workload than other areas of the city. (See, Plaintiffs' Ex. 15, paras. 9 to 88; Plaintiffs' Ex. 16-18.)

Hispanic officers, who represent only 7.2% of the patrol force, have been assigned to 13.7% of the patrol assignments in Blue 14; 17.7% of the patrol assignments in Green 35; 4.7% of the patrol assignments in Red 41; 14% of the patrol assignments in Red 42; and 10.7% of the patrol assignments in Red 43. (See Plaintiffs' Ex. 15, paras. 9 to 88; Plaintiffs' Ex. 16-18.)

It is clear that black officers are overrepresented in every one of the high crime areas and Hispanic officers are

overrepresented in all the high crime areas except for Red 41.[14]

In contrast, in the low crime sectors, black and Hispanic officers have been assigned, respectively, to only 0.7%, and 0.2% of the Amber 24 patrol assignments; 1.5% and 1.5% of the Amber 25 patrol assignments; 1.0% and 0.4% of the Green 38 patrol assignments; 2.1% and 0.7% of the Amber 21 patrol assignments; and 2.1% and 0.9% of the

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[14] If the statistics for black and Hispanic officer geographical assignments are combined, the overrepresentation of minorities in the high-crime areas is all the more vivid: with the exception of Blue 14, although black and Hispanic officers represent just slightly more than 19% of the force, the majority of officers assigned to each of the high-crime areas were black and Hispanic: Blue 14 -- 35.4% minority; Green 35 -- 63.1% minority; Red 41 -- 65.4% minority; Red 42 -- 57.7% minority; Red 43 -- 58.6% minority.

While it is true, as defendants assert in their post-trial brief, that white, nonminority officers also have been assigned to the high-crime areas, that does not alter the fact that less than 20% of the police force, on the average, is assigned to well over 50% of the high-crime area assignments. Given the gross disparity in assignments, the fact that nonminority officers were also assigned to the high-crime areas indicates to the Court simply that there are not sufficient numbers of minority officers in the department to cover all the high-crime area assignments. That conclusion is supported by the virtual nonexistence of minority officers assigned to the comparatively low-crime areas. See infra.

Green 36 assignments.[15] (See Plaintiffs' Ex. 15, paras. 9 to 88; Plaintiffs' Ex. 16-18.)

The implications, at least, of the above statistics are bourne out by the O.R.S.'s finding at the conclusion of its investigation of plaintiffs' administrative charges, that defendants discriminated on the basis of race in the geographical assignments of police officers. (Plaintiffs' Ex. 16.)

Geographical assignments, like the assignments to the specialized divisions, are made solely at the discretion of white supervisory personnel. As with the assignments to the Specialized Divisions, that fact, combined with the clear statistical evidence showing that minority officers are grossly overrepresented in high-crime areas, as well as the findings and conclusions of the O.R.S. and the intranscience of defendants in taking any corrective action since those findings and conclusions were issued,[16] leads, again, inescapably to the inference that defendants purposefully and intentionally discriminated on the basis of race in assigning police officers to the different geographical sectors of the City. Williams v. Colorado Springs School District, 641 F.2d 835 (10th Cir.1981); Sledge v. J.P. Stevens & Co., 585 F.2d 625, 635 (7th Cir.1978); James v. Stockham Valves & Fittings Co., 559 F.2d 310 (5th Cir.1977).

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[15] These figures approach the "inexorable zero" which constitutes an overwhelming showing of disparate impact, if not treatment and creates a clear inference of intentional discrimination. Intl. Bhd. of Teamsters, supra, 431 U.S. at 342, n. 23.

[16] See n. 13, supra.

Defendants offered no evidence to refute the plaintiffs' statistical showing or the O.R.S.'s findings. Defendants' only explanation as to why black and Hispanic patrol officers have had to shoulder far more of the most arduous and dangerous patrol assignments than their numbers in the department indicate should be their fair share, was a vague reference by Supt. Walsh that men are assigned according to "the relative importance that they may have in different types of neighborhoods." (Tr. p. 76.) Insofar as that reference is an oblique way of explaining that officers are matched by race to the racial composition of a sector, such a rationale is not a valid reason for the disparate pattern of work assignments. See Knight v. Nassau County Civil Service Commission, 649 F.2d 157 (2d Cir.1981); Segar v. Civiletti, 508 F. Supp. 690 (D.D.C.1981).[17] As the Second Circuit noted in Knight, such a rationale is "based on racial stereotype that blacks work better with blacks and on the premise that [an employee's] race [is] directly related to his ability to do the job." Knight, supra, 649 F.2d at 162. Moreover, the articulation of such an invalid reason is an admission of a racially-based motive.

Thus, the Court concludes that plaintiffs have also proved that defendants intentionally discriminate against black and Hispanic police officers in assignments to geographical areas of the City in violation of 42 U.S.C. § § 1981 and 1983; Title VI and Title VII of the 1964 Civil Rights Act; and

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[17] Cf. 42 U.S.C. § 2000e-2(e), which, as the court in Segar noted, specifically excludes race from those characteristics for which a bona fide occupational qualification exception to the Title VII prohibition against discrimination could apply.

the State and Local Fiscal Assistance Act, 31 U.S.C. § 1242(a).

3. Pairings of Patrol Officers

Plaintiffs claim that defendants unlawfully segregate black police officers by consistently pairing them with other minority officers and by permitting white, nonminority officers to avoid being paired with black partners.[18] If pairing assignments were made randomly or without regard to race, black officers who, as noted, comprise 11.9% of the B.P.D., could expect to be paired with other black officers approximately 11.9% of the time.

The evidence admitted at trial, however, indicates that such color-blind pairing of officers is not the case.[19] Of the 27 black officers who, during the sample period, were paired with other officers in two-officer radio cars, 15 were assigned with other black officers on more than 90% of the occasions they were paired. (Plaintiffs' Ex. 15, para. 92.) Twenty-one of the black officers were paired with other black officers on more than 50% of the occasions they were paired. (Plaintiffs' Ex. 15, para. 93.) Twenty-three of the black officers were paired with other minority (black or Hispanic) officers on more than 75% of the occasions they were paired (Plaintiffs' Ex. 15, paras. 94-96, 98-177.) Twenty-five of the 27 black

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[18] The plaintiffs made no claim nor presented any evidence that Hispanic officers were so segregated, and the Court makes no finding as to the pairing of Hispanic officers.

[19] See n. 9, supra.

officers were paired with other minority officers on more than 50% of the occasions they were paired. (Id.) Only two black officers were paired with white, non-minority officers on more than half the occasions they were paired. (Plaintiffs' Ex. 15, paras. 94-97; 199-206.)

The O.R.S. concluded from its investigation that "53.3% of minority officers are assigned to work with each other . . . [while] only . . . 17.7% of minority officers are assigned to work with a white officer . . . These figures indicate that . . . personnel work assignments are being made, at least in part, on the basis of race [which] constitutes a discriminatory employment practice." (Plaintiffs' Ex. 16, Attachment p. 6).[20]

Again, as with assignments to the Specialized Divisions and the different geographical sectors of the City, partner assignments are made at the discretion of white supervisory personnel. (Testimony of Arthur Carter and Supt. Walsh.) Supt. Walsh testified that the Commanding Officers might take an officer's preference into consideration when making partner assignments. (Tr. 114.) Officer Carter testified that, although he had never been assigned a partner on the basis of his preference, it had been his experience that white officers, who had been paired with him, would on occasion speak to the Commanding Officer, and subsequently Carter or the white officer would be reassigned to a different partner. From Carter's testimony, which at least in part was supported by Supt. Walsh's testimony, the Court infers that the Commanding Officers' discretionary decision as to pairing

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[20] The remaining 29% were determined to work without partners.

assignments may have been based, in part at least, on white officers' preference not to be assigned to black partners. That, in and of itself would be sufficient for a prima facie case of intentional racial discrimination. When combined with the discretionary nature of the assignment process, plus plaintiffs' telling statistics, and the O.R.S.'s findings, plaintiffs' prima facie showing is clear.

Defendants offered no evidence to rebut plaintiffs' statistics, the O.R.S.'s findings, or Arthur Carter's testimony. Nor did defendants offer any explanation for the consistent pattern of pairing black officers exclusively or predominantly with other black or Hispanic officers -- other than the asserted "preference" of the officers, which is not a valid rationale for racial segregation of employees.

The Court therefore holds that plaintiffs have proved that defendants intentionally discriminated against black officers on the basis of their race in the pairing of patrol officers in violation of 42 U.S.C. § § 1981 and 1983; Title VI and Title VII of the 1964 Civil Rights Act; and the State and Local Fiscal Assistance Act.

B. Discrimination in Disciplinary Actions

Plaintiffs claim that black officers, because of their race, are brought up on disciplinary charges more often and subjected to harsher sanctions than white officers.

According to the testimony of Supt. Walsh, he or other supervisory or commanding officers may determine in the first instance whether an infraction of departmental rules has occurred. Supervisory officers also have the discretion to

recommend to the Superintendent the severity of the sanction which they believe should be imposed in a given case -- ranging from forfeiture of paid holidays to suspension or termination from the department. Where the penalty is loss of holidays, the Superintendent is authorized to impose such sanction without a hearing. More severe sanctions may be imposed only by the defendant Police Commissioners after a hearing, although normally the officer will be suspended from the department by the Superintendent pending the hearing.

The evidence in this case showed that, during the sample period of January 1, 1976, to May 19, 1978, although black officers represented only about one-tenth of the department, they were named for disciplinary action an equal number of times as white officers who represented over 80% of the B.P.D. (Plaintiffs' Ex. 15, para. 240.) During the same period, black officers forfeited 24 paid holidays, while white officers, who outnumbered blacks more than 8 to 1, forfeited only 26 paid holidays. (Plaintiffs' Ex. 15, paras. 241-245.) Of the 11 suspensions which occurred during the sample period, six were of black officers; five were of white officers. These statistics strongly suggest that departmental regulations are discriminatorily applied and that disciplinary sanctions are discriminatorily imposed depending on the color of an officer's skin.

That suggestion is confirmed by evidence which showed that black officers are brought up on charges for the same conduct which is ignored when committed by white officers, and that black officers receive harsher sanctions than white officers for the same or similar infractions.

For example, Capt. Leo Budnick and Patrol Officer John McGee, both white officers, were accused of shoplifting at a local department store.[21] No disciplinary charges were brought against and no sanctions were imposed on either Budnick or McGee. (Plaintiffs' Ex. 15, paras. 250-256.) Another white patrol officer, Gerald Lombard, was arrested for shoplifting $48.42 worth of merchandise from a local department store. Departmental charges were brought and Lombard was suspended from the force for six months. (Plaintiffs' Ex. 19F.) In contrast, when Robert Grimes, a black patrol officer, was arrested for shoplifting $2.99 worth of merchandise, he was terminated from the department. (Plaintiffs' Ex. 15, paras. 257-260; 19G).[22]

On January 20, 1976, Chester Zukowski, a white patrol officer, was terminated from the police department for allegedly threatening his wife with a gun. However, he was reinstated to the department one year later. (Plaintiffs' Ex. 15, paras. 261-263.) Edmund Bish, a black patrol officer, was

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[21] The only evidence of the allegations against Budnick and McGee is plaintiffs' Requests For Admissions, Exhibit 15, which, as noted, supra, n. 9, were deemed admitted and conclusively established due to the failure of defendants to respond to the Requests. Also as noted, such evidence is established only for purposes of the case at bar.

[22] The Court notes the records show that although both Officer Lombard and Officer Grimes had each executed written statements admitting that they had taken merchandise, criminal charges were apparently only brought against Grimes. No explanation for this appears in any of the documents submitted to the Court as evidence in this case.

terminated from the department for similar conduct, but, in contrast, he was never reinstated. (Plaintiffs' Ex. 15, paras. 265-268.)

White Patrol Officer John Uliano was deprived of 20 paid holidays by the defendants for leaving his assignment without permission to visit a bar and to escort two women home. (Plaintiffs' Ex. 19A.) Similarly, Patrol Officers Edward Moran and Douglas St. Germaine, both of whom are white, received a penalty of forfeiture of 15 paid holidays for leaving their posts without permission and reporting back to duty after drinking. (Plaintiffs' Ex. 19B & C.) In contrast, Patrol Officer Donald Woodard, a black officer, was terminated from the police department by defendant Board of Commissioners for leaving his post without permission. (Plaintiffs' Ex. 19D.[23])

The above examples are cited merely to point out the discrepancy that exists between the nature and extent of disciplinary actions taken against black officers compared to those taken against white officers. The Court does not mean in any way to indicate approval of any of the conduct with which any of the officers specified were charged. However, the clear implication of the evidence is that, if you are black and a member of the B.P.D., you are very likely to be punished -- even fired -- for conduct which might very well be ignored if you were white, or that you will be punished far

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[23] The Court notes that, according to the records before it, the B.P.D. conducted a very detailed investigation in Patrol Officer Woodard's case, while the investigations of the three white officers appear to be relatively sketchy.

more severely than you would be if you were white. The clear inference to be drawn from the cited examples, as well as from the statistics indicating that a far greater percentage of black officers than white officers have been subjected to disciplinary proceedings, is that defendants intentionally discriminate on the basis of race in the amount and kind of discipline meted out to its officers.

Indeed, the O.R.S. concluded the same thing following its investigation of plaintiffs' charges. In addition to citing statistical evidence showing that "a far greater number of minority officers are being disciplined than one would normally expect," the O.R.S. went on to pointedly note that

> "the city has chosen to ignore the disciplinary system as it pertains to various white officers who have been convicted in court and fined for violations of a person's civil rights in the course of official duty. On the other hand, the record reveals that two black officers have been terminated from the force in the past year when they were arrested on a misdemeanor charge . . . . it is inconsistent and results in disparate treatment on the city's part to address violations of law so severely for minorities and then ignore it for white officers."

(Plaintiffs' Ex. 16, Attachment, pp. 7-8.)

Defendants offered no evidence to rebut plaintiffs' statistics relating to disciplinary actions taken against black and white officers or the evidence of specific examples of differences in treatment, or the O.R.S.'s findings. Nor did

defendants attempt to explain the obvious discrepancies in treatment. Plaintiffs have clearly proved that defendants intentionally discriminate on the basis of race in the number, kind, and severity of disciplinary actions they take against black officers in the department. Such discrimination violates Title VI and Title VII of the 1964 Civil Rights Act; 42 U.S.C. § § 1981 and 1983; and the State and Local Fiscal Assistance Act, 31 U.S.C. § 1242(a).

C. Discrimination in Working Conditions

Plaintiffs allege that defendants have subjected black officers to discriminatory working conditions by fostering, permitting, and maintaining a racially charged work environment.

The evidence introduced at trial indicates that racial slurs and disparaging remarks directed against blacks, as well as racial harassment of black officers are frequent occurrences in the B.P.D., and that they are not only tolerated, but engaged in by supervisory personnel as well as the rank and file, including the head of the department, Superintendent Walsh.

For example, a cartoon-type booklet, entitled "Minority Sergeants Exam" (Plaintiffs' Ex. 12), which contains demeaningly stupid questions, was circulated throughout the Department just before a sergeant's exam was to be administered in January 1980.[24] The obvious intent of

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[24] That exam was enjoined by order of this Court on Feb. 14, 1980, because as noted in n. 13, supra, contrary to Judge

the booklet was the derogation of black police officers, the implication being that blacks could only pass a sergeant's exam that was so idiotic. Supervisory personnel reacted to the booklet by joining in laughter about it. (Testimony of Theophilus B. Meekins.) Superintendent Walsh testified that he sent a copy of the booklet to the City's fire chief. The Court finds dubious Supt. Walsh's assertion that the cover of the booklet he saw simply said "Civil Service Exam" rather than "Minority Sergeant's Exam," thus eliminating any racial overtones. Equally dubious in the Court's view is the Superintendent's rather vague assertion that once the racially derogatory nature of the booklet was made known to him, a "full investigation" was conducted, complete with "reports from captains, lieutenants," as apparently nothing resulted from any investigation and no action was taken to halt the booklet's circulation.

Despite a departmental regulation in effect since 1973 (Plaintiffs' Ex. 15, para. 215) prohibiting the posting of racial slurs on departmental bulletin boards, a poster, depicting a caricature of a black male figure with a target superimposed over the figure's body and entitled, "Official Runnin' Nigger Target," (Plaintiffs' Ex. 11) was displayed on an official notice bulletin board. (Testimony of Arthur Carter.) Another departmental regulation requires that anything that is posted on department bulletin boards must first be approved by a

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Newman's order in "Guardians I," the test had not been validated as job-related and because it had been shown in prior use to have an adverse impact on minorities. See Memorandum of Decision, Bridgeport Housing Authority Police v. City of Bridgeport, B-77-130 (D.Conn., Feb. 14, 1980). (The Guardians were intervenors in that action).

supervisor. (Testimony of Arthur Carter.) The Court can only assume, in the absence of any evidence to the contrary, that the "target" poster with its clear message of violent hostility toward blacks, was thus approved by supervisory personnel before it was displayed.

Plaintiffs' Exhibit 15 established that there have been many instances of racist slurs being bandied about the B.P.D. Indeed, Supt. Walsh, shrugged off the importance of such remarks and admitted that he himself might have been guilty of making racial slurs. (Testimony of Supt. Walsh.) Black officers apparently have found racial epithets and grafitti on their lockers, as well as in other places in the B.P.D.; police radios have been used to transmit derogatory racial remarks over the air, where they are undoubtedly heard by supervisors as well as the public. (Plaintiffs' Ex. 15, paras. 209-232.)

Despite numerous complaints registered by black officers to commanding officers regarding the racial slurs, harassment and insults, nothing has been done to stop such behavior. (Plaintiffs' Ex. 15, paras. 209-232.)

The evidence thus indicates a pattern of racially insulting and humiliating behavior which apparently has been condoned by supervisory officers. Even if Supt. Walsh's assertions that investigations were conducted was to be credited, it is incredible that a police department which is charged with solving crimes would be unable to uncover the instigators of such behavior within its own ranks and to take appropriate disciplinary action to prevent its continuation or recurrence. Yet, apparently such behavior not only went unpunished, it was laughed off or condoned by those responsible for preventing it.

It is true that such practices and behavior do not directly affect an employee's economic interest in his or her employment. Nonetheless, Title VII, at least, protects more than just economic interests. Section 703(a) of that statute provides that "it shall be an unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation terms, conditions or privileges of employment because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1) (emphasis added). Title VII further makes it unlawful to "adversely affect [an employee's] status . . . because of such individual's race [or] color . . . ." 42 U.S.C. § 2000e-2(a)(2).

It has been said time and again that Title VII is to be afforded a broad and liberal interpretation in order to effectuate its beneficial purpose of eradicating unlawful discrimination from the American workplace. See, e.g. Griggs v. Duke Power Co., 401 U.S. 424 (1971); Rodriguez v. Board of Education, 620 F.2d 362 (2d Cir.1980); Rogers v. E.E.O.C., 454 F.2d 234 (5th Cir.1971), cert. denied, 406 U.S. 957 (1972), and cases cited therein.

Title VII has thus been held to require an employer to at least take steps to eliminate or correct a hostile "working environment heavily charged with racial discrimination." United States v. Buffalo, 457 F. Supp. 612, 613, 631 (W.D.N.Y.1978), modified on other grounds, 633 F.2d 643 (2d Cir.1980); see also Rogers v. E.E.O.C., supra, 454 F.2d

at 239.[25] Title VII thus gives employees the right to expect that employers will not turn a blind eye to blatant manifestations of racial prejudice and discrimination, and it certainly gives them a right to expect that employers -- and their supervisory agents -- will not foster or participate in the creation and maintenance of a hostile, racist and discriminatory working environment.

Defendants here have permitted a racially-charged atmosphere to develop and continue in the B.P.D. They have permitted their supervisory personnel to participate in such racial harassment. This constitutes discrimination in the "terms, conditions, and privileges" of black officers' employment, and consequently, a violation of Title VII of the 1964 Civil Rights Act.

D. Retaliation Claims

Plaintiffs claim that defendants violated Title VII by taking adverse actions against officers of the Guardians in retaliation for that organization's efforts to eliminate racial discrimination from the B.P.D.

Title VII specifically provides that:

> "It shall be an unlawful employment practice for an employer to discriminate against any of

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[25] See United States v. St. Louis, 549 F.2d 506 (8th Cir.), cert. denied, 434 U.S. 819 (1977); Gray v. Greyhound Lines, East, 178 U.S.App.D.C. 91, 545 F.2d 169 (1976); Barnes v. Costle, 183 U.S.App.D.C. 90, 561 F.2d 983 (1977).

> his employees . . . because he has opposed any practice, made an unlawful employment practice by this Title, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this title." 42 U.S.C. § 2000e-3.

Arthur Carter served as President of the Bridgeport Guardians from 1978 to 1981. In 1980, the Guardians and Carter, in his role as President, intervened in Bridgeport Housing Authority Police, et al. v. Bridgeport, B-77-130 (D.Conn.) in which they sought and received from this Court, a preliminary injunction prohibiting the use of a racially discriminatory promotional examination.[26]

Carter testified at trial that shortly after the injunction against the Sergeant's Exam was entered his supervisor, Sergeant Trungadi, confronted him by expressing his displeasure with the litigation that gave rise to the injunction. Then, upon learning that Carter had recently been hospitalized for high-blood pressure and artery spasms, Trungadi commented that Carter should be transferred from Blue 12, a low-crime patrol car assignment to a particularly high-risk, high-stress assignment in Red 40 or 41. And, in fact, Carter was subsequently transferred to Red 40. (Testimony of Arthur Carter; Plaintiffs' Ex. 9.) A white officer was transferred into Red 40 at the same time, but he was

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[26] See United States v. St. Louis, 549 F.2d 506 (8th Cir.), cert. denied, 434 U.S. 819 (1977); Gray v. Greyhound Lines, East, 178 U.S.App.D.C. 91, 545 F.2d 169 (1976); Barnes v. Costle, 183 U.S.App.D.C. 90, 561 F.2d 983 (1977).

reassigned almost immediately after he made a request for reassignment. (Plaintiffs' Ex. 9.) Officer Carter made several requests to be reassigned back to Blue 12, all to no avail. (Plaintiffs' Ex. 6-9.) Sergeant Trungadi apparently continued to harass Officer Carter, prompting Carter to send a three-page letter to Supt. Walsh, in which he set forth a series of harassing incidents to which he had been subjected by Trungadi, and he asked to be transferred out of Trungadi's platoon -- which request was denied. (Carter's Testimony.) Supt. Walsh testified that Carter was transferred from Blue 12 because he wasn't enforcing parking summonses sufficiently, although he also admitted that Carter was never disciplined in any way for this supposed failure in his performance in his Blue 12 assignment. Defendants offered no evidence to substantiate Supt. Walsh's explanation. Logic would dictate that, under normal circumstances, transferring a police officer, who suffers from hypertension, to a particularly stressful assignment simply because he has not strictly enforced parking summonses would be both counterproductive and an unusually harsh penalty. It must be noted, in addition, that Supt. Walsh also testified that the Department's practice was to assign ailing or disabled officers to desk jobs in the Booking or Records Division. (see p. 608, supra). In contrast, Officer Carter's high-blood pressure was met with an assignment to a particularly stressful post.

Considering the testimony as a whole, including judgments as to credibility, the Court finds that Carter's reassignment to Red 40 was done in retaliation for his involvement with the Guardians and in the Sergeant's exam litigation. Such retaliation constitutes a violation of § 704(a) of Title VII, 42 U.S.C. § 2000e-3.

Officer Charles Smith, a 20-year veteran on the police force, and apparently the only black officer assigned to the Tactical Division in 1971, was elected President of the Guardians on a Saturday in early June of 1971. The following Monday, after publication of news reports of his election, he was transferred out of Tactical and into the Patrol Division. Although ten white officers were transferred out of Tactical at the same time -- according to Supt. Walsh to "shake the outfit up" -- all, except Officer Smith, were transferred back to Tactical or to other specialized divisions. Officer Smith has remained in Patrol to this day. (Testimony of Charles Smith.)

Again, taking the evidence as a whole, including the unexplained reassignment of all white officers, but not Carter, as well as judgments as to credibility, the Court finds that Officer Smith suffered retaliation because of his involvement in the Guardians in violation of § 704(a) of Title VII, 42 U.S.C. § 2000e-3.

Finally, Officer Theophilus Meekins was twice suspended from active duty while he was the President or an active member of the Guardians. The first suspension occurred in April of 1978, while Officer Meekins was President of the Guardians. That action was taken ostensibly on the basis of charges arising from the theft of Meekins' police vehicle. However, after almost a year of suspension without pay, an arbitration panel found that he was unjustly terminated. (See Memorandum of Decision, dated March 5, 1981 in Dobosz v. Delmonte, 509 F. Supp. 964 (D.Conn.),

issued by this Court.)[27] Officer Meekins was subsequently reinstated, although it is unclear whether he ever received the back wages which the arbitration panel directed he be paid.

The second suspension occurred in January, 1981, shortly after the Connecticut Commission on Human Rights and Opportunities ("CHRO") issued a finding of discrimination against defendants. That suspension ostensibly was the result of a citizen's complaint against Meekins for his arrest of that citizen. Meekins was suspended and brought up on charges even though Captain Sharnick, who investigated the complaint, determined that the complaint was not supported by the evidence and recommended that no disciplinary action be taken. (Memorandum of Decision, Dobosz, supra.) A panel of special masters appointed by this Court also found, after the fact, that the disciplinary action taken against Officer Meekins was unwarranted under the circumstances. (Report of Special Masters, Dobosz, supra, June 5, 1981.)

It appears to the Court now, as it did in March of 1981, that the disciplinary actions taken against Officer Meekins were the result of the defendants' animosity toward Officer Meekins for his as well as the Guardians' actions against discriminatory practices which were taken in administrative agencies as well as in the courts. Dobosz, et

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[27] The Court agrees to and takes judicial notice of the proceedings in Dobosz v. Delmonte, 509 F. Supp. 964 (D.Conn.), including the findings of fact made in the March 5, 1981 Memorandum of Decision, which, insofar as applicable, the Court adopts and incorporates in this decision, as well as the record in that case as a whole.

al, supra, March 5, 1981 Memorandum of Decision. Such actions constitute a clear violation of Title VII's prohibition against retaliatory actions against a person who seeks to enforce that statute's antidiscrimination provisions. 42 U.S.C. § 2000e-3.

II. First Amendment Claims

Plaintiffs claim that Bridgeport Police Department regulations numbered 61 and 62 are impermissibly overbroad and void for vagueness and that their enactment unconstitutionally deters plaintiffs from exercising their rights of freedom of speech regarding their efforts to secure equal employment opportunities and their opposition to racial discrimination in the B.P.D. The regulations provide as follows:

> "61. Members of the Department shall not speak or write critically or derogatorily of other members of the Department to any person within or outside the Department in matters relating to Department business, order, instructions or action of any members, except in accordance with the Rules and Regulations.
>
> 62. Members of the Department shall not deliver public addresses, or disseminate written material, concerning the work of the Department or, under any circumstances, make statements for publication concerning the plans, policies or affairs of the administration of the Department, unless duly authorized to do so by the Superintendent."

The parties stipulated on the record that the above regulations are unconstitutionally overbroad and vague, and the Court agrees. Such regulations must, then, be excised from the Department's rules and regulations.

Conclusion

The foregoing represents the Court's decision on the issues involved in this case. An order setting forth the appropriate remedies shall follow in due course.

Dated at Bridgeport, Connecticut this 16th day of November, 1982.

/s/_____
T.F. Gilroy Daly
United States District Judge

APPENDIX Q

AGREEMENT BETWEEN THE CITY OF BRIDGEPORT AND BRIDGEPORT POLICE LOCAL #1159, JULY 1, 1997 THROUGH JUNE 30, 2001

ARTICLE 1

RECOGNITION

Section 1- The City hereby recognizes the Union as the exclusive representative and bargaining age at for the bargaining unit, consisting of all uniformed and investigatory employees, including Police Officers, Detectives, Sergeants, Lieutenants, Captains and Deputy Chiefs, but excluding the Chief of Police, employed by the City of Bridgeport, in the Police Department for the purposes of establishing wages, hours, and other conditions of employment.

ARTICLE 6

DISCIPLINARY ACTION

Section 1 - No permanent employee shall be removed, dismissed, discharged, suspended, fined, reduced in rank, or otherwise disciplined except for just cause.

Section 2 - The Chief or his designee may impose upon any officer discipline of up to fifteen (15) days suspension without pay, provided that the Chief or his designee shall first provide the officer with a written statement of the specific charges

(rule and regulation violated) against him, and the information upon which the charges are based, and provide the officer with the opportunity to respond to said charges. The Chief's decision shall be in writing and if a holiday falls within the period of suspension, shall indicate whether the holiday is to be without pay as a part of the suspension.

Section 3 - Disciplinary hearings shall be conducted by the Board of Police Commissioners or if designated by the Board before a subcommittee of the Board consisting of at least three (3) members thereof, concerning those matters addressed by the Barros Decree as amended, or where the Chief deems that the appropriate discipline if found guilty should be in excess of a suspension of fifteen (15) days without pay. Any such hearing before the Board of Police Commissioners shall commence within sixty (60) days of the referral of the charges to it, and said hiring once commenced shall not be unreasonably protracted. An employee in the bargaining unit who is alleged to have committed a disciplinary offense shall be charged with a specific violation of a department rule or regulation by the Chief of Police or his designee and such charge shall be the only basis for discipline. The Chief or his designee shall, prior to the commencement of said hearing, have the right to amend the statement of charges. In the event the amended charges are delivered to the Union and the employee less than five (5) working days prior to the commencement of the hearing, then at the request of the Union the hearing shall be rescheduled for a new date not less than five (5) working days from the date of delivery of the amended charges.

Section 4 - Notwithstanding the above, an employee charged with a disciplinary offense under Section 2 or 3 may be suspended without pay or suspended with pay or placed on administrative status and may be prohibited from working or may be assigned to work other than his regular duties within his own division or in a non-biddable position, at the discretion of the Chief or his designee until such charges have been drafted and/or heard and a decision rendered. In the event the employee is suspended with pay or placed on administrative status and assigned to inside work, he shall not be entitled to outside overtime, but shall be entitled to inside overtime in the position to which he is assigned. Any such employee assigned to inside work may still seek a make whole remedy for lost overtime. The Union not process any grievance for any other employee whose overtime opportunities are adversely effected by the employee on suspension with pay and/or administrative status assigned in accordance with this Section. Any such immediate suspension without pay may only be imposed and continued in cases where the officer has been arrested for felony charges, or is unavailable for duty because of incarceration; or because of institutionlization in connection with actions that would constitute a felony. If any employee is suspended without pay under this Section 4, he shall, within ten (10) work days of such suspension, have a hearing with reference to the charges against him commenced by the Board of Police Commissioners. With the mutual agreement of all parties, which may not be unreasonably denied, the ten (10) day requirement can be waived, however, a hearing on the charges shall be commenced within sixty (60) days of the date of suspension end continuance for commencement of the hearing shall only be granted beyond sixty (60) days upon

request of the accused and/or his representative; however, a hearing shall be held within a reasonable period of time.

In discipline cases of suspension without pay, if a hearing has been commenced within sixty (60) days of the date of suspension, but remains incomplete, such employee's pay shall be reinstated on the sixty-first (61st) day.

Section 5 - At least seven (7) work days prior to any hearing before the Board of Police Commissioners, and within a reasonable time prior to the hearing with the Chief, the Union and employee shall be provided with all evidentiary information to which the are entitled pursuant to the Municipal Employee Relations Act. Evidentiary information, including the charges and the OIA report shall be delivered to all of the Police Commissioners prior to the scheduled hearing date, except that in Barros Decree cases the President of the Police Board shall receive any information to which the President is entitled pursuant to the Barros Decree; as well as the charges so that the President may reasonably schedule the docket of the Board of Police Commissioners.

Section 6 - Any employee charged with a disciplinary offense may enter a plea of no contest and accept an agreed upon discipline in lieu of a hearing or an employee during the case of a disciplinary hearing may accept an agreed upon discipline in lieu of completing the hearing. In either event the employee shall sign a written waiver of right of appeal and neither the employee nor the Union shall have any authority to appeal the discipline and the discipline shall be final and binding on all parties.

Section 7 - If an officer is disciplined under Sections 2 or 3 and the employee and Union both feel that the action was without just cause, the Union may, no later than ten (10) days after receipt by the Union of the written decision, submit said dispute to arbitration before the Connecticut Board of Mediation and Arbitration for Section 2 Discipline or the American Arbitration Association for Section 21 Discipline. The arbitrator shall hear the dispute and render a decision that shall be final and binding on all parties. The arbitrator shall have the power to uphold the action of the City or to rescind or modify such action, and such power shall include, but shall not be limited to the right to reinstate a suspended or discharged employee with full back pay. The City shall pay all costs of the arbitrator and the American Arbitration Association.

Section 8 - The time limits specified herein may be extended by agreement of the parties in writing.

Section 9 - Working days, as used in this Article, exclude weekends and holidays.

Section 11- Notwithstanding any other rights the Chief possesses under this Article, the Chief may assign an employee to administrative status with pay where the Chief certifies in writing, stating the basis for such certification, that a condition exists which might compromise, limit, or prohibit the employee from effectively performing his or her duties or expose the City to liability. An employee placed on administrative status may be assigned to inside work with or without a department weapon at the Chief's discretion or may be placed on off duty administrative status with pay. Any employee assigned to administrative status where overtime is

available, may work such overtime of consistent with his assignment, but may not work outside overtime. If an employee is placed on administrative status with pay the Union may request that the American Arbitration Association assign an arbitrator to hear the matter on an expedited basis in lieu of any other proceedings under the grievance procedure. The arbitrator shall have the power to decide whether or not the administrative status was appropriate or whether or not the administrative status should be continued and, if so, the length of time it should be continued, with the arbitrator retaining continuing jurisdiction, if necessary, and to make whole the employee if it is determined the employee was placed improperly on administrative status. The cost of the arbitrator shall be paid for equally by the parties.

APPENDIX R

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Civil Action No. B-482

[Filed: December 21, 1973]

RAFAEL BARROS, ET ALS., *Plaintiffs*,	)
THE BISHOP'S COMMISSION ON HUMAN RELATIONS, ET ALS. *Intervening Plaintiffs*,	)
v.	)
JOSEPH A. WALSH, ET ALS.	)

SETTLEMENT STIPULATION

I

In April of 1972, the above-entitled action was initiated in the Federal District Court for the District of Connecticut. The plaintiffs' complaint alleged inter alia, that the defendants have carried out an improper pattern of conduct directed at the plaintiffs and members of their class. The defendants deny these allegations.

Following the institution of this action, counsel for the plaintiffs and defendants have engaged in negotiation and discussion of the plaintiffs' cause of action and prayer for relief. This stipulation is the result of those negotiations, and the plaintiffs and defendants agree that a consent judgment shall enter in accordance with the provisions of the Federal Rules of Civil Procedure. Costs shall not be charged to either party in this action.

II

1. The Bridgeport Police Department has adopted Departmental Rule and Regulation No. 20 as follows:

> "A member of the Department shall give all proper information to persons requesting the same, courteously and accurately, avoiding all unnecessary conversation or controversy; he shall give his name and badge number to any person who may request the same."

And Departmental Order No. N-33 (June 30, 1967) as follows:

RE: IDENTIFICATION NAME PLATES

> "1. Identification name plates have been distributed to all members of this Department, and the wearing of the same will become effective immediately.

2. Members of the uniform divisions will receive two sets, one to be worn on summer shirts, and one to be worn on winter uniform jackets. These plates will be worn on the right side of the shirt or jacket, directly opposite the police badge.

3. Members of the detective divisions and the clerical staffs will be issued a clip-type plate, which will be worn on the left side shirt or jacket pocket."

Paragraph 3 above shall apply to Department members assigned in plain-clothes on crowd disturbance duties.

2. The Bridgeport Police Department has adopted Department Rule No. 52 as follows:

> "Courtesy and civility toward the public, employees and members of the Department shall be displayed at all times by all members and employees of the Department. Intolerance in action or speech toward any person because of nationality, race or religion shall not be shown, displayed or expressed by any Department member or employee at any time."

III

A. CITIZENS COMPLAINTS

The Bridgeport Police Department has adopted Procedure Order No. B-111 for the handling of citizen complaints against police officers. Said Procedure Order is attached hereto as Exhibit A and made part of this decree. It shall remain in full force and effect but shall be amended as follows:

Paragraph 2 of Procedure Order No. B-111 is hereby amended as follows:

> "All complaints written, oral or telephoned shall be referred to or accepted by the platoon captain or senior patrol officer on duty, who shall in all cases, use the following procedures:"

Paragraph 3(b) is hereby amended by adding thereto the following:

> "Take or have statements taken from witnesses sworn to when possible."

Paragraph 3(c) is hereby amended as follows:

> "Question and take sworn statements from policeman or policemen complained against."

Paragraph 3 is amended by adding thereto paragraphs 3(f), 3(g) and 3(h) as follows:

3(f)

> "At the time the complaint is made or as soon as thereafter as is practical in no event later

than thirty(30) days, the complainant shall be informed of the names of all the officers who participated in the arrest or incident complained of. After the complaint is taken, the complainant should be told an investigation will take place as soon as possible; that his/her witnesses will be contacted and interviewed and that she/he will be informed in writing as to the results of any investigation."

3(g)

"Complainants may be represented by counsel at all stages of the proceedings."

3(h)

"Complaints not filed within sixty (60) days from the date of the event or occurrence complained of or disposition of criminal charges against the complainant; may be summarily rejected at the option of the Department."

* * * * *

persons who will assist at the taking of such complaints when called. Complaints can be made by any person who alleges that she/he was the object of misconduct or by any person who witnesses an incident involving alleged misconduct. All complainants who appear personally shall be referred to the platoon captain or senior patrol officer on duty, who shall in all cases, use the following procedure:

C. BOARD OF POLICE COMMISSIONERS

The first paragraph under Board of Police Commissioners shall be amended by adding thereto the following:

"within sixty (60) days."

There shall be added the following paragraphs:

"Complainants, witnesses and officers shall be held fully accountable for the truth of their sworn statements, however, no complainant, witness or officer shall be held accountable for their unrecorded testimony in executive session unless such testimony is in violation of Department Rules and Regulations or Procedures.

After the executive session is concluded the Board shall enter into its minutes a description of the nature and extent of the investigation and statement of reasons for its finding.

IV

1. The Bridgeport Police Department reaffirms its policy of willingness to meet with Bridgeport community groups regarding police community relations in Bridgeport.

2. All meetings to be held in the City of Bridgeport about police community relations or related topics

will be given prompt and adequate police protection, whether such meetings shall be denominated "public" or "private".

CONSENTED TO AND APPROVED BY:

/s/_____
James M. Kearns

APPENDIX S

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Civil Action No. B-482

[Filed: July 30, 1985]

RAFAEL BARROS, ET ALS.,	)
Plaintiffs,	)
	)
THE BISHOP'S COMMISSION	)
ON HUMAN RELATIONS, ET ALS.	)
Intervening Plaintiffs,	)
	)
v.	)
	)
JOSEPH A. WALSH, ET ALS.	)
	/

8/1/85

For the reasons stated in open court on July 31, 1985, the joint motion to modify the existing decree in this action is granted. The Final Report of the Special Master is affirmed, approved, adopted, and so ordered.

/s/_____
Robert C. Zampano, U.S.D.J.

JULY 30, 1985

FINAL REPORT OF THE SPECIAL MASTER

Following submission of Recommendations of the Special Master dated May 6, 1985, the positions of the parties regarding those recommendations were heard in open court at a hearing held on May 20, 1985.

At that hearing written suggest, ions were submitted by counsel for the individual plaintiffs, which had not been previously presented to counsel for the City of Bridgeport for review.

As a result, it was agreed that the City would be given an opportunity to study the modification to the proposed order of the Special Master suggested by counsel for the individual plaintiffs and counsel for the institutional plaintiffs, and thereby permit the City to agree to those proposals to which it had no objection.

On june 8, 1985, the City submitted a proposed revision to the recommendation of the Special Master to aid counsel for all parties, which incorporated most of the changes requested by all plaintiffs.

On July 2, 1985, a conference was held at the office of the Special Master at which all parties' counsel were present, together with counsel for Bridgeport Police Officers to Preserve Civil Service, Inc., a corporation formed by a group of Bridgeport police officers wh£ch has since moved to intervene and be made a party to this action.

At the conference all outstanding differences of the parties as to substance and language to be incorporated in a modification of this Court's order dated December 20, 1979 were resolved with one exception. The Corm of order attached to this final report embodies the agreed upon order in the Corm consented to by all counsel at the conference of July 2, 1985, except that the first sentence of Section I is objected to by Superintendent Walsh through his counsel. In other respects, the parties are in agreement that the Court may enter a modification to its order of December 20, 1973 in accordance with Exhibit A to this report.

The position of Superindendent Walsh with respect to his disagreement with the language of the first sentence of Section I is set forth in his moving papers filed with the Court dated May 24, 1989.

Respectfully submitted,

William C. Longa
Zeldes, Needle & Cooper 69695
A Professional Corporation
333 State St., P.O. Box 1740
Bridgeport, Connecticut 06601
Telephone: (203) 333-9441

Special Master

APPENDIX T

U.S. Const. Art III § 1

SECTION 1.

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a compensation, which shall not be diminished during their Continuance in Office.

42 U.S.C. § 2000e-2(a)(1)

(a) Employer practices

It shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion sex, or national origin; or ...

42 U.S.C. § 2000e-2(n)

(n) Resolution of challenges to employment practices implementing litigated or consent judgements or orders

(1)(A) Notwithstanding any other provision of law, and except as provided in paragraph (2), an employment practice that implements and is within the scope of a litigated or consent judgment or order that resolves a claim of employment discrimination under the Constitution or Federal civil rights laws may not be challenged under the circumstances described in subparagraph (B).

(B) A practice described in subparagraph (A) may not be challenged in a claim under the Constitution or Federal civil rights laws -

(i) by a person who, prior to the entry of the judgement or order described in subparagraph (A), had -

(I) actual notice of the proposed judgment...; and

(II) a reasonable opportunity to present objections to such judgment or order;...

(2) Nothing in this situation shall be construed to -

. . .

(C) prevent challenges to a litigated or consent judgment or order on the ground that such judgment or order was obtained through collusion or fraud, or is transparently invalid

or was entered by a court lacking subject matter jurisdiction; or

(D) authorize or permit the denial to any person of the due process of law required by the Constitution.

. . .

42 U.S.C. § 2000e-7

Effect on State laws

Nothing in this subchapter shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by an present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this subchapter.

Rule 53 (a), (e) of the Federal Rules of Civil Procedures

Rule 53. Masters

(a) Appointment and Compensation. The court in which any action is pending may appoint a special master therein.

. . .

(e) Report

(1) Contents and Filing. The master shall prepare a report upon the matters submitted to the master by the order of

reference and, if required to make findings of fact and conclusions of law, the master shall then set forth in the report.

. . .

(2) In Non-Jury Actions. In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous.

. . .

Connecticut General Statute § 7-468 (a) - (c)

§ 7-468. Rights of employees and representatives.

(a) Employees shall have, and shall be protected in the exercise of, the right of self-organization, to form, join or assist any employee organization, to bargain collectively through representatives of their own choosing on questions of wages, hours and other conditions of employment and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from actual interference, restraint or coercion.

(b) When an employee organization has been designated by the State Board of Labor Relations as the representative of the majority of the employees in an appropriate unit, or has been recognized by the chief executive officer of a municipal employer as the representative of the majority of employees in an appropriate unit, that employee organization shall be

recognized by the municipal employer as the exclusive bargaining agent for the employees of such unit.

(c) When an employee organization has been designated in accordance with the provisions of section 7-467 to 7-477, inclusive, as the exclusive representative of employees in an appropriate unit, it shall have the right to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership.

§ 7-473c . . . Mandatory binding arbitration; procedure;

. . .

(b) (1) If neither the municipal employer nor the municipal employee organization has requested the arbitration services of the State Board of Mediation and Arbitration . . . within thirty days after the date the parties to an existing collective bargaining agreement commence negotiations to revise said agreement on any matter affecting wages, hours, and other conditions of employment, said board shall notify the municipal employer and municipal employee organization that . . . binding and final arbitration is now imposed on them, . . .

(2). . . the municipal employer and . . . the municipal employee organization each shall select one member of the arbitration panel. . . . the two members of the arbitration panel shall select a third member, who shall be impartial representative of the interests of the public in general and who shall be selected from the panel of neutral arbitrators . . .

(c) . . . the arbitration panel shall . . . hold a hearing within the municipality involved. . . . Any member of the panel shall have the power to take testimony, to administer oaths and to summon, by subpoena, any person whose testimony may be pertinent to the matters before said panel, together with any records or other documents relating to such matters.

. . .

(d) . . . (2) Within five days after the conclusion of taking of testimony, the panel shall forward to each party an arbitration statement, . . . setting forth all agreement provisions . . . and stating, in numbered paragraphs, those issues which are unresolved.

(3) Within ten days after the conclusion of the taking of testimony, the parties shall file . . . statements of last best offer . . . corresponding to the statement of unresolved issues contained in the arbitration statement, ...

(4) . . . the parties may file . . . briefs on the unresolved issues . . .

(5) . . . each party may file . . . a reply brief

. . .

Connecticut General Statute § 7-475

§ 7-475. Strikes prohibited

Nothing in sections 7-467 to 7-477, inclusive, shall constitute a grant of the right to strike to employees of any municipal employer and such strikes are prohibited. . . .

Connecticut General Statute § 7-474 (f)

§ 7-474

. . .

(f)Where there is a conflict between any agreement reached by a municipal employer. . .and an employee organization on matters appropriate to collective bargaining, and any charter, special act, ordinance, rules or regulations adopted by the municipal employer or its agents . . . the terms of such agreement shall prevail. . .

Connecticut Special Acts (1883)

Be it enacted by the Senate and House of Representatives in General Assembly convened: Section fifty-eight of the charter of the city of Bridgeport, as amended March

thirteenth, 1878, is hereby amended by adding to the first sentence in said section the following: "And they shall have the power to fix the salaries and compensation of the various officers and member of said department," so that said section shall read as follows:

Sec. 58. The police commissioners of said city of Bridgeport shall have the sole power of appointment and removal of officers and members of the police department of said city of Bridgeport, and they shall have the power to fix the salaries and compensation of the various officers and members of said departments. And it shall be the duty of the said board of police commissioners to appoint suitable persons to fill the offices of said police department, and other suitable persons as members of said police department, and to suspend, remove, or expel any officer or member from office or membership in said department, whenever, in the judgment of said commissioners, such suspension, removal, or expulsion shall be for the best interest of the city.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CIVIL ACTION NO. B 78-175 (JBA)

[Filed JANUARY 28, 2000]

THE BRIDGEPORT GUARDIANS, INC. ET AL.	)
v.	)
ARTHUR J. DELMONTE, ET AL.	)

OBJECTIONS OF BRIDGEPORT POLICE UNION TO PROPOSED ORDER BY STIPULATION

I. INTRODUCTION

AFSCME, Council 15, Local 1159, AFL-CIO (the Bridgeport Police Union, hereinafter referred to as the "Union") hereby objects to the entry of an Order as proposed by those parties to the Stipulation dated January 11, 2000. The Union, by pleading dated January 14, 2000, moved to be joined as a party defendant and on January 18, 2000, this court stated that said motion would be granted.[1]

[1] The Court did suggest that the Union reconsider seeking party status as a defendant as, in the Court's view, the Union would more properly be a party plaintiff. The Court did not, however, indicate that the allowance of party status was contingent upon the Union seeking status as a party plaintiff.

At the said January 18, 2000, hearing, the Court also indicated that written pleadings relating to the Stipulation should be filed on or before January 28, 2000 and that the Court would hold another hearing on February 4, 2000.

What follows is a summary of the Union's objections to the proposed Order. To the extent that an evidentiary hearing is necessary[2] to a proper review of these objections, the Union requests such a hearing as well as a reasonable amount of time to prepare for such hearing.

II. OBJECTIONS

A. REPLACEMENT OF THE BOARD OF POLICE COMMISSIONERS

The proposed discipline procedure (See, Section II A.) would substitute a "Hearing Officer" for the Board of Police Commissioners for cases in which the discipline may exceed a fifteen (15) day suspension. At present, the Union and the City are parties to a collective bargaining agreement which

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[2] While the Union believes that the factual basis of its objections is largely undisputed by the City and/or the Guardians, the Union is not aware of the scope of the evidentiary record before this Court, given the Union's relatively recent entry into this litigation. Some preparation time may be necessary to determine which facts are undisputed and which require formal introduction of evidence. It is also worth noting that in order for this court to fully appreciate the history and nature of the Bridgeport Police Commission, the Court will need to take judicial notice of special (state) legislation creating such commission and a certain amount of time is necessary to research this legislation given that it was passed more than a century ago.

expires[3] on June 30, 2001, and which specifically requires that such discipline decisions be made by the Board of Police Commissioners. The Union objects to[4] such substitution on the basis that it constitutes a violation of the collective bargaining agreement, a unilateral change in the disciplinary procedure, and is not narrowly tailored to address the proper issues before this Court.

The substitution also raises the following concerns:

— Unpaid citizen volunteers/appointees are more responsive to community and department concerns than a paid professional;

— A entity which is comprised of several persons with differing points of view has fact-finding advantages (much like a jury) over a single person;

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[3] Pursuant to state statute, Conn. Gen. Stat. §7-475, the contract remains in force after its expiration until a successor contract has either been agreed to or awarded through statutory interest arbitration. See, Conn. Gen. Stat. §7-473c.

[4] The Union indicated by correspondence dated October 4, 1999 that it may not object to the replacement of the Board of Police Commissioners with some other entity. This statement was made shortly after the Union was informed of the replacement concept by the mediator. The Union has since decided that it will object, given its contractual rights under the collective bargaining agreement, certain subsequent actions by the City, feedback from the Union's membership, and the total refusal of the City to negotiate this issue in accordance with state law. While the Union was previously unsure whether the proposal would intrude upon mandatory topics of collective bargaining, such intrusion is clear at this point in time.

— The substitution will prejudice the Union in that it will lead to a City attempt to eliminate arbitration of disputes concerning serious discipline, which right to arbitration the Union presently enjoys under Article 6, §7 of the collective bargaining agreement;

— The substitution will impose increased costs on the City on a regular basis thereby prejudicing the Union's ability to preserve (or increase) economic benefits in successor collective bargaining agreements;

— The City would use such substitution as a basis for claiming at grievance arbitration that the grievance is either not arbitrable or de jure without merit;

— The substitution would unfairly afford the Bridgeport Guardians status as an organization entitled to directly negotiate broad terms and conditions of employment for the whole bargaining unit, in violation of state law.

B. INTRODUCTION OF PRIVATE COUNSEL

The proposal introduces private attorneys into the process for hearings on both serious and minor discipline. This clearly alters the Union's role at hearings before the Chief because a Union officer has ordinarily served as the respondent officer's advocate. It will tend to lengthen, complicate, and formalize what is, at present, an informal procedure.

It should be noted that the core purpose of the disciplinary hearing is to determine whether "just cause" for discipline exists under Article 6, §1 of the collective

bargaining agreement. In short, discipline is an issue of enforcement of the collective bargaining agreement.

It is conceivable under this proposal that the City would exclude the Union altogether from attendance at a disciplinary hearing. The Union is certified by the State Board of Labor Relations as the "chosen representative" of all members of the bargaining unit.

The Union particularly has a right to insure that no settlement agreements are entered into which prejudice the bargaining unit as a whole or conflict with the collective bargaining agreement.

C. PRESENCE OF DESIGNATED INDIVIDUALS

The proposal allows the respondent officer the right to a "designated individual" in addition to his/her "chosen representative." This is clearly an attempt to interject representatives of the Bridgeport Guardians, Inc. into the domain of the Union and as such is improper given the Union's exclusive status as collective bargaining representative under state law.

D. REQUIREMENT OF WRITTEN DECISION

At present no such requirement exists and decisions are rendered almost immediately after the conclusion of the evidentiary phase. This requirement will unnecessarily delay issuance of decisions and will possibly impact the substantive outcome in situations where the hearing is conducted by the

Chief or his designee and the "decision" is written by another person such as an Assistant City Attorney.

E. DEFENSE TO BE SUPPORTED BY EVIDENCE

At present, evidence relating to defenses in hearings before the Chief is usually presented by way of proffer. Under the proposal the evidence must be produced yet there is no ready mechanism available to guarantee access to the evidence.

The proposed language reads:

> A claim by the respondent officer that the proposed discipline is disparate or unfair in comparison to past discipline imposed for a similar offence, or is unfair for any other reason, shall be supported by relevant evidence. (emphasis added).

The Union views this as overbroad given the circumstances which are purportedly by being addressed by the Guardians and the City. Under this proposed language, evidence of all defenses, including defenses having nothing to do with disparate treatment, must be presented at the outset. The Union views this provision with great skepticism because it will be used as a means of excluding evidence at arbitration.

The supposed intent of this language was to require the respondent officer to raise Title VII related defenses at the disciplinary hearing before raising such claims to the Special Master. Such an intent would more properly be expressed as follows:

A claim by the respondent officer that the proposed discipline is, in part or in whole, discrimination against the officer because of the officer's race, color, religion, sex or national origin, shall be supported by relevant evidence.

F. REDUCTION OF DUE PROCESS TO THE CONSTITUTIONAL MINIMUM

At present, officers enjoy a long-standing past practice of full evidentiary hearings including compelled evidence (via subpoenas) and live testimony under oath. The proposal only provides for the right to "be informed of the evidence against him" and "the opportunity to challenge the evidence presented by the Chief". These are synonymous with the minimal due process elements "notice" and "opportunity to be heard" required by the Fifth Amendment as set forth in Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985).

It is well established that due process is flexible and calls for such procedural protection as the particular situation demands. Morrissey v. Brewer, 408 U.S. 471, 481 33 L. Ed. 2d 484, 92 S. Ct. 2593 (1972). Where a collective bargaining agreement exists and provides for grievance arbitration, predisciplinary due process requirements may be minimal. See Hunt v. Prior, 236 Conn. 421, 436 (1996); Tedesco v. Stamford, 222 Conn. 233, 241-254 (1992).

The level of due process presently afforded officers arises from an unwritten yet enforceable past practice. The City has every right to bargain the present level of due process

afforded down to the constitutional minimum but the City has been unable or unwilling to do so.

The proposed language but another attempt by the City to reduce the level of due process to the constitutional minimum.

The Union represents to this Court that the City recently attempted[5] to unilaterally impose this very reduction in the due process historically offered officers before the Police Commission and was reminded that such would constitute on unfair labor practice absent the Union's consent or an interest arbitration award in the City's favor. (See correspondence attached hereto).

G. APPROVAL-REJECTION OF SETTLEMENTS

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[5] The parties' practice in disciplinary hearings before the Board of Police Commissioners has always entailed an initial evidentiary (including live sworn testimony) presentation by the Department. (Similar to a criminal proceeding in which the State bears the burden of proof and puts its case on first). Serious administrative charges were brought against Lieutenant Nina Thomas for certain alleged misconduct and Thomas was also arrested on felony charges for the same alleged events. Lieutenant Thomas eventually resigned thereby eliminating the need for a disciplinary hearing before the Board of Police Commissioners. The undersigned counsel for the Union has subsequently been involved in disciplinary hearings before the Police Commission and the City did continue to afford the level of due process afforded in the past and did not reduce such to the "Loudermill style presentation" threatened by Attorney Houston in his January 11, 1999 letter (attached hereto)

At present, prohibited practice complaints (Case Nos. MPP-21,204 and MPP-21,337) (copies attached) are pending before the State Board of Labor Relations in which the Union alleges that the City, through its Police Commission and Personnel Director, wrongfully "rejected" settlements agreement entered into by the Union and the City's collective bargaining representative. The proposal is an blatant attempt to validate this wrongful rejection and to insulate similar violations in the future of valid settlement agreements.

The proposed would also, as a practical matter, preclude any future settlements at arbitration. It is difficult, if not impossible, to conceive of circumstances where the proposed Hearing Officer would agree to rescind or reduce discipline that he or she had only recently imposed.

The Union contends that since arbitration is the exclusive province of the Union under the collective bargaining agreement, the Union is prejudiced by the existence of this provision. The Guardians, upon information and belief, contend that this provision will stop "sweetheart" deals that favor white officers. The Union is not aware of any such disparate treatment in settlements and would note that all officers, minority and non-minority alike, have benefitted from settlements. The City, upon information and belief, contends that this provision codifies existing state law. The Union disputes the existence of such law and notes that if such exists, it does not need to be codified in the disciplinary procedure.

H. FEDERAL COURT INVOLVEMENT

The proposal appears to represent a redrafting of Article 6 of the collective bargaining agreement. The proposal expressly involves the participation of the federal court in the disciplinary procedure on an ongoing basis, the most notable facet being the requirement that the court appoint all "Hearing Officers".

There can be no reasonable expectation to an end of the proceedings set up by the 1983 Remedy Order given this continuing involvement. The Union cannot reasonably expect to fill its proper role until all of its members are forced to rely on the grievance-arbitration procedure and the collective bargaining process as the primary means to resolve the great bulk of employment disputes.

The purported goal of this proposal is to bring to a close this ongoing litigation (e.g. the above-captioned case.) The Union contends that this proposal, if anything, institutionalizes the federal court's involvement in the day-to-day operations of the Bridgeport Police Department without apparent limitation.

The Union has, in recent years, witnessed attempts by the City to use the existence of the Remedy Order and the availability of the Special Master as a means to obtain an advantage in labor disputes having nothing to do with Title VII issues. For example, the City sought and received relief from the Special Master on an arbitration award in the Union's favor, all without notice to, or opportunity to be heard by, the Union. See e.g. Clarification of Supplemental Recommendation Ruling Re Discipline of Errant Police Officers by Board of Police Commissioners. (March 27, 1991) (approval April 22, 1991). The arbitration award in that case had nothing to do with disparate/discriminatory treatment of minority officers.

The Union contends that the court's involvement is necessarily limited to addressing discrimination against an officer because of officer's race, color, religion, sex, or national origin. It is the Union's role to enforce that provision in the collective bargaining agreement that prohibits discipline in the absence of just cause. The Union objects to any involvement by the Court over and above what is necessary to remedy violation(s) of Title VII.

I. THE PROPOSAL IS NOT AN APPROPRIATE REMEDY GIVEN THE FACTS

The Union has an is attempting to familiarize itself with the facts/events which culminated in the proposal which is the subject of these objections. The Union contends as follows:

1. Any and all reports due the Special Master would not be prepared by the Bridgeport Police Commission. The Commission is a body of unpaid citizen volunteers/appointees. Such reports are prepared by the Department Clerk, a certified police officer (usually a Sergeant), who is under the direct supervision and control of the Police Chief. It would simply be unfair to attribute failure to submit reports to the Commission itself.

2. The ninety (90) day hearing requirement was not common knowledge in the Police Department. The Union only became aware recently of this requirement and the Union is unclear at present as to whether such

requirement was a court order or a mere "expectation". Certainly the Union would have used/enforced this requirement in the past had it been so aware.

3. The Joanne Simmons (Complaint dated July 25, 1995) matter does not warrant this change. It is almost impossible to understand how this litigation continued to proceed after the Master's July 8, 1996 finding that a "series of mistakes totally lacking in willfulness" resulted in the Department's violation. It is also difficult to understand why this Court or the Master should contest the Police Commission's February 4, 1999 findings given that the Court referred the matter to the Commission after the Master's finding that Halpin was untruthful.[6]

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[6] Presumably the Commission was entitled, as trier-of-fact, to reach a different conclusion as to Halpin's credibility.

Possibly the Union's lack of understanding is due to its lack of involvement[7] in the matter. In any event, Halpin has retired and is no longer employed by the City.

J. UNWARRANTED CIRCUMVENTION OF THE MUNICIPAL EMPLOYEES RELATIONS ACT

As noted above, the Union is the exclusive collective bargaining representative of all uniformed and investigatory police department employees, excepting the Chief. As such the City is obligated to negotiate only with the Union concerning those broad terms and conditions of employment which impact the bargaining unit as a whole. See Conn. Gen. Stat. § 7-469 (duty to bargain). In addition, Connecticut's statutory framework contemplates binding interest arbitration where the organization and the municipal employer have reached impasse concerning a mandatory topic of collective bargaining. See Conn. Gen. Stat. § 7-473c.

The proposed order resulted from negotiations between the City and the Guardians. This is impermissible direct

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[7] The Department's case against Halpin and the co-respondent officers was presented by an attorney paid for by the City and, upon information and belief, Halpin and the co-respondent officers were defended by an attorney paid for by the City. This was unique in the Union's experience and can hardly be attributed to the Police Commission. Indeed, the delays in hearing this case after remand by this Court may very well be due to the Commission's ambivalence concerning potential conflicts between the Commission's findings and the Master's findings as well as reluctance to hear an adversarial proceeding which entailed City-retained attorney versus City-retained attorney.

dealing. Furthermore, the City has refused to negotiate these issues in accordance with state law as it has clearly indicated that it will not submit to interest arbitration but will simply ask this Court to implement through the mechanism of a consent decree.

The Union is seeking relief before the State Board of Labor Relations (See Complaint MPP-21,208, copy attached) with respect to this conduct and the Union asks this Court to refrain from entering any Order which is contrary to the Municipal Employees Relations Act (MERA), Conn. Gen. Stat. § 7-467 et seq. The Court can avoid conflict with State law by narrowly tailoring its remedies as suggested herein.

AFSCME, Council 15, Local 1159

By_____
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CERTIFICATION

This is to certify that a copy of the foregoing was mailed, postage prepaid, to John Bohannon, City Attorney, 909 Board Street, Bridgeport, CT 06604, Vincent Musto, Attorney at Law, Koskoff, Koskoff & Bieder, P.O. Box 1661, Bridgeport, CT 06601, William Barnes, Esq., 1100 Kings Highway East, P.O. Box 687, Fairfield, CT 06430 this 28th day of January, 2000.

By_____

Harry B. Elliott, Jr.
Staff Attorney

Supreme Court, U.S.
FILED
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No. 01-0166

In The

Supreme Court of the United States

AFSCME, COUNCIL #15 LOCAL #1159 AFL-CIO,

Petitioner,

v.

BRIDGEPORT GUARDIANS, INC. and
CITY OF BRIDGEPORT,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

BRIEF IN OPPOSITION OF RESPONDENT BRIDGEPORT GUARDIANS

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QUESTION PRESENTED FOR REVIEW

Did the Court of Appeals correctly conclude that the District Court's Order of March 24, 2000 provided appropriate relief in light of the unique facts of this case, notwithstanding the objections of the union that it did not consent to the District Court's order and that the order affected the Union's rights without its consent?

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STATEMENT OF THE CASE

This appeal arises from the Second Circuit's affirmance of an order of the District Court approving changes to one aspect of the disciplinary process used by the Bridgeport Police Department. This change in the disciplinary process took place within the context of the underlying litigation in the case of *The Bridgeport Guardians, Inc. v. Delmonte*, 553 F.Supp. 601 (D.Conn. 1982). In *Guardians v. Delmonte, id.*, the Court found that minority police officers within the Bridgeport Police Department were subjected to all-encompassing racial discrimination in discipline, assignments, and working conditions in violation of Titles VI and VII of the Civil Rights Act of 1964, 42 U.S.C. 2000d and 42 U.S.C. 2000e, *et seq.*, as well as other federal statutes. A significant element of the Court's finding of racial discrimination involved the administration of discipline within the Bridgeport Police Department.

A. *Guardians v. Delmonte:* The 1982 Court Order

In 1982, the District Court, by Judge T. F. Gilroy Daly, issued its initial decision in the case of *Bridgeport Guardians v. Delmonte*, 553 F.Supp. 601 (D.Conn. 1982). The Court found that the Bridgeport Police Department, at its highest levels up to and including the Chief of Police and Police Commission, had fostered racial discrimination by, among other things:

- "Intentionally discriminat(ing) on the basis of race in the number, kind, and severity of disciplinary actions (taken) against black officers in the department." *Id.* at 614.

- Permitting a "racially-charged atmosphere to develop and continue in the B.P.D. They have permitted their supervisory personnel to participate in such racial harassment." This harassment included posting a "Runnin' Nigger Target" on an official departmental bulletin board and the distribution by the Police Chief of a "Minority Sergeants Examination" which contained "demeaningly stupid questions" . . . implying that "blacks could only pass a sergeant's exam that was so idiotic." *Id.*, at 615.
- Retaliating against members of the Guardians who brought complaints of racial discrimination by, for example, assigning an officer who had been hospitalized for high blood pressure to a "particularly high-risk, high-stress assignment." *Id.* at 616.

As a result of its findings of racial discrimination, the Court issued a Remedy Order that was intended to address the ingrained racism within the Bridgeport Police Department. An important element of that Remedy Order was the appointment of a Special Master to review and recommend relief for complaints of racial discrimination in the imposition of discipline and for other forms of racial harassment within the Bridgeport Police Department. Under the Remedy Order and the Federal Rules of Civil Procedure, the Special Master would issue findings and recommended rulings to the Court which would then be subject to the Court's review. Fed. R. Civ. P. 53(e)(2).

Unfortunately, the record reveals that the racism described in *Guardians v. Delmonte, id.*, did not come to an end with the Court's 1982 decision. The level of activity in this case over the seventeen years preceding the

Court's order is reflected in the fact that the docket for this case comprises 1046 entries and over 100 pages of entries. Throughout his tenure, the Special Master has found repeatedly that racial discrimination remains alive within the Bridgeport Police Department. In addition, over the years, the Bridgeport Police Department has frequently been subjected to suit in the Federal Court as a result of racial discrimination in its hiring, promotions, and operations.[1]

B. Decisions of the Special Master

In an October, 1990 recommended ruling, the Special Master observed that, with the filing of a separate federal court lawsuit concerning racial discrimination in promotions, "Racial animosity reached a boiling point . . . A rash of racial epithets and slurs appeared including the notorious and infamous graffiti – 'KKK the answer, try it,' in the men's locker room at Police Headquarters." The Special Master found that a "properly functioning disciplinary process" was essential to ending such racial discrimination.

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[1] See, for example, *Bridgeport Guardians, Inc. v. Bridgeport Civil Service Commission*, 354 F.Supp. 778 (D.Conn. 1973), *aff'd, in part*, 482 F.2d 1333 (2d Cir. 1973); *Members of Bridgeport Housing Authority Police Force v. City of Bridgeport*, 499 F.Supp. 760 (D.Conn. 1980), *aff'd in part and rev'd in part*, 646 F.2d 55 (2d Cir. 1981); *Dobosz v. Delmonte*, 509 F.Supp. 964 (D.Conn. 1981); *Bridgeport Guardians v. Delmonte*, 553 F.Supp. 601 (D.Conn. 1982); *Brown v. Bridgeport Civil Service Commission*, B86-282 (D.Conn. 1986); *Bridgeport Guardians v. City of Bridgeport*, 735 F.Supp. 1126 (D.Conn. 1990), 933 F.2d 1140 (1991), *cert denied*, 502 U.S. 924, 112 S.Ct. 337, 116 L Ed.2d 277 (1991).

Only four months earlier, in July, 1990, the Special Master had threatened to impose upon the Police Commission a fine of $1000 per day and suspension from office because of its failure to promptly and fairly discipline minority and white officers in the same manner. The genesis of this threatened fine and suspension of the Police Commission was the Special Master's 1988 decision on the complaint of Officer William Bailey (hereafter "the *Bailey* case"). In the *Bailey* case, the Special Master ordered that the Board of Police Commissioners "report to the Special Master on the steps taken to ensure that Black police officers, because of their race, are not brought up on disciplinary charges more often and subjected to harsher sanctions than are White officers."

In response to the *Bailey* decision, the Police Commission claimed to have made a "new beginning" by implementing a policy of prompt and evenhanded discipline. However, in his July, 1990 Recommended Ruling, the Special Master found that, rather than a "new beginning," the Board's post-*Bailey* behavior was "a return to business as usual." In addition to failing to promptly discipline errant officers, "the likelihood that minority officers would face discipline before the Board more frequently than similarly situated white officers substantially increased. Minority officers also face significantly quicker imposition of discipline by the Board than do similarly situated white officers."

As a consequence of the Police Commission's discriminatory imposition of discipline, a "backlog" of disciplinary cases had arisen which the Special Master ordered the Commission to eliminate. Equally important, the Special Master ordered the Commission to file regular

reports concerning its imposition of discipline and its processing of disciplinary cases. In a supplemental ruling issued in 1991, the Special Master approved a plan which the City represented to be the "final procedure as its plan to eliminate the backlog" of discipline cases. Under this procedure, cases would be resolved within three months of the date on which charges were brought.

Nevertheless, racial discrimination continued to thrive within the Bridgeport Police Department. A Recommended Ruling issued by the Special Master in 1995 highlighted the depth of the continuing racial discrimination within the Department. In that Ruling on the complaint of Officer David Daniels (who was the President of the Guardians), the Special Master found that Officer Daniels was subjected to a campaign of racial harassment which included jamming his radio transmissions, failure of white officers to provide back-up to him when he was in danger, and the placement of a hangman's noose under the hood of his car while it was parked at a Police Department facility.

In 1997, the Special Master reached a new level of frustration at the Department's inability to police itself. He found that the Department had violated a court order in failing to prevent the assignment of Officer Joe Ann Simmons to the supervision of Sergeant James Halpin. Halpin was a white Bridgeport Police Officer who had earlier pled guilty to criminal charges stemming from having beaten and seriously injuring a Black citizen who was in his custody. Because of racial harassment directed at Officer Simmons by Officer Halpin, the Court had ordered that he be forbidden from supervising her. However, this order was violated on at least six occasions. As

a result of the Department's failure to comply with the Court's order, the Special Master recommended that Department be held in contempt and fined, and that the Police Chief be suspended.

During the course of proceedings, the Special Master found that "Sergeant Halpin did not testify truthfully before me." The Special Master then referred this charge of perjury to the Chief who referred it to the Police Commission for resolution. As noted by the Court in its Memorandum of Decision of May 17, 1999, the Police Commission ignored the findings of perjury by Sergeant Halpin and exonerated him. In that Memorandum of Decision, the Court addressed challenges raised by Sergeant Halpin and other white officers to the role of the Special Master. The Court noted that,

> the Special Master's broad powers under paragraph 10B of the Remedy Order empower him to do all acts and take all measures necessary or proper to "receive, investigate and remedy all complaints of discriminatory treatment or racial harassment . . . and, in appropriate cases, to bring disciplinary charges against those responsible and/or those supervisors who foster or permit such racial harassment to occur in violation of department rules." (Remedy Order, 553 F.Supp. at 619). Within this specification, under Fed.R.Civ.P. 53(c), "the master has and shall exercise the power to regulate all proceedings in every hearing before the master and to do all acts and take all measures necessary or proper for the efficient performance of the master's duties under the order . . . "

Judge Arterton went on to point out that the "traditional use of the Special Master to oversee compliance is a necessary component of the Remedy Order, and thus within the powers conferred by the Remedy Order. *See, United States v. Microsoft*, 147 F.3d 935, 954 (D.C. Cir. 1998)." The Judge further explained the critical role played by the Special Master over the previous seventeen years:

> He has, moreover, provided an immense value to this Court as well as to the parties as a Special Master with a long range historical perspective, who has overseen the enforcement and administration of the Court's Remedy Order since its issuance in 1982, and has come to understand the parties. . . . While the Court is troubled that his services continue to be necessary so many years after issuance of the Remedy Order, the Court concludes that there is no reason that this Special Master should not continue to receive, investigate, and remedy all complaints related to administration and implementation of the Remedy Order.

Significantly, a similar ruling had been issued by Judge T. F. Gilroy Daly nearly *ten years earlier.* At that time, the Bridgeport Police Union (the appellants in this case) challenged a Recommended Ruling by the Special Master and challenged his actions (and, by extension, those of the Court) as *having interfered with the collective bargaining rights of the union under the union contract* – precisely the issue in the current appeal. The Court rejected the union's contention holding, "the Police Union has provided no support for the contention that the contract has any impact upon a duly issued Court

Order." This decision was issued by the Court ***in 1990*** and ***was never appealed by the Union.***

Thus, the union's present appeal appears to have been brought ten years too late. Further, any claim by the union that it was unaware until recently of the role of the Special Master or the Court is simply not true.

C. The Stipulation and the Court's Order

The seventeen-year history of litigation which has been highlighted above serves as the basis for the Stipulation between the City and the Guardians which is the subject of this appeal. The union asserts that there were no findings of discrimination to serve as a basis for the Court's modification of the Remedy Order in accordance with the Stipulation. To the contrary, the record in this case at the time of the Court's modification of its Remedy Order included seventeen years of findings of discrimination. The Stipulation can best be understood in light of the Court's findings of continuing discrimination during the preceding seventeen years.

In 1990, the Police Commission was under the threat of a $1000 per day fine and suspension from office because of its failure to fairly and promptly administer the disciplinary process. In order to monitor the Commission's actions, the Special Master required that the Commission file regular reports concerning its imposition of discipline and concerning its processing of disciplinary cases. In January, 1999, the Special Master found that the Commission had failed to comply with this order during the preceding nine years, that the Commission had been unable or unwilling to resolve the backlog of disciplinary

cases, and that the Commission continued to permit disciplinary cases to remain open and pending for excessive periods of time.

In April, 1999, the Court confronted the parties with the lack of progress in rooting out racial discrimination within the Bridgeport Police Department. The Court urged the parties to undertake efforts to remedy the Police Commission's repeated failures to comply with the Court's orders concerning the fair imposition of discipline, reporting of disciplinary cases to the Special Master, and elimination of the backlog of disciplinary cases. At that hearing, the Court indicated that, unless the parties to this case were able to resolve the underlying causes of the continuing flow of complaints of racial discrimination, the Court would adopt its own remedies to do so. As the Court subsequently noted at the time it approved the Stipulation of the parties, one of the remedies which the Court was seriously considering was the dissolution of the Board of Police Commissioners.

In May, 1999, the Court issued a Memorandum of Decision finding the defendants in contempt for their failure to comply with an earlier order of the Court requiring that the Department protect a minority officer from racial harassment. At the time, the Department was operating under the threat of being held in contempt for violation of various Court orders in *Guardians v. Delmonte, id.*, and the Special Master had recommended the suspension of the Police Chief for failing to take action to ensure enforcement of the Court's orders.

In August, 1999, the Special Master found that the Police Commission had continued to fail to file timely or

complete reports, had failed to resolve disciplinary cases in a timely manner, and that the disciplinary system was "lax and inefficient." On May 2, 2000, the Special Master recommended that the Court consider holding City in contempt or placing the Department in receivership. The Special Master expressed his frustration with the Board's shortcomings, stating, "It is hard to conceive how the Board could think that it could ignore on a regular basis in such a blatant fashion the authority and integrity of the United States District Court. How long will it take for the City of Bridgeport, the Bridgeport Police Department and the Board of Police Commissioners to understand once and for all that they are not above the law?" The Special Master further recommended that the Court "consider appropriate remedies and sanctions such as imposition of fines, damages, appointment of a receiver or other judicial overseer for the Bridgeport Police Department."

At the urging of the Court in April, 1999, the parties had entered into mediation to attempt to resolve their differences. Those mediation sessions resulted in the settlement of certain individual cases which were pending before the Special Master. However, in order to root out racism, it was apparent to all involved (except the police union) that systemic changes within the Bridgeport Police Department were needed. Accordingly, on January 11, 2000, the parties to this litigation entered into a Stipulation that proposed the removal of the Police Commission from disciplinary decisions based on internal complaints of racial discrimination. This was far less harsh relief than the Court's and Special Master's contemplated remedy of entirely disbanding the Police Commission.

All members of the Bridgeport Police Department as well as the Bridgeport Police Union were notified of this Stipulation. The union was given notice of the Stipulation in spite of its refusal to participate in the negotiations which led to the Stipulation. On January 14, 2000, the Police Union moved to intervene in this case for the limited purpose of objecting to the Stipulation. On February 4, 2000, the Court held a hearing at which all parties and intervenors were present and had the opportunity to be heard. On March 24, 2000, the Court issued its decision approving the Stipulation.

In its decision, the Court noted that the Stipulation is intended to provide "uniformity of treatment of all Bridgeport Police officers charged with serious disciplinary offenses." The Court further noted that,

> One important objective of the negotiated change is to eliminate the perception or the reality that any one group is advantaged or disadvantaged by the disciplinary process. This objective is to be accomplished by providing for disciplinary hearings conducted by professional, court-appointed hearing officers, not politically appointed citizen commissioners.

The Stipulation provides extensive due process protections to officers accused of internal rules violations, not the least of which is the resolution of such claims by court-appointed, qualified hearing officers rather than the Police Commission which has, for so many years, mismanaged the Department's disciplinary process. In addition, officers charged with disciplinary offenses are provided with written notice of the charges; all evidence

upon which the charges are based; information concerning the outcome of similar comparison cases in the past five years; the right to union representation and to separate retained counsel; a tape recorded or transcribed hearing at which the officer may challenge the Department's evidence; and an opportunity to challenge any proposed discipline as disparate or unfair. Further, all decisions of the hearing officers must be presented in writing, which will ensure that the basis for each decision is explicit and that there will be uniformity of decisions in similar cases. In order to avoid the possibility that the decisions of Hearing Officers can be undercut by racially and politically motivated "deals" made by the Police Commission or the union, any settlement of a case pending before a Hearing Officer must be approved by that Hearing Officer. Finally, all union rights to appeal disciplinary decisions pursuant to the union contract are preserved.

The Court of Appeals affirmed the Order of the District Court on April 26, 2001.

REASONS FOR DENYING THE WRIT

There are two reasons for denying the writ. First, the Court of Appeals correctly affirmed the District Court's order that was based on overwhelming evidence in the record of this case. Second, the facts of this case are unique to Bridgeport and to the nearly twenty year history of this case and do not raise an issue which warrants review by this Court.

A. The Court of Appeals Correctly Affirmed the District Court's Order

The District Court's approval of the Stipulation between the parties to this litigation is supported by a unique history of racial discrimination within the Bridgeport Police Department. The seventeen-year record of proceedings in this case demonstrates that the Bridgeport Police Commission has simply been unable or unwilling to end racial discrimination within the Bridgeport Police Department, particularly discrimination in discipline.

As the Court of Appeals correctly noted, the change to the Court's Remedy Order which is at issue here, "would probably have been justified as a Remedy in 1983 and was fully justified after the many years of at least partial non-compliance with the requirements of prompt and fair processing of disciplinary complaints by police officers and of timely reports of compliance." *Guardians v. Delmonte*, 248 F.3d 66, 73-74 (2d Cir. 2001).

The District Court's Order approving the Stipulation of the parties to this litigation is more than adequately grounded in the evidence in this case. The facts outlined in this brief comprise only a fraction of the facts upon which the Court's decision was founded. As was true in *United States v. Yonkers Board of Education*, 29 F.3d 40 (2d Cir. 1994); *cert. denied*, 515 U.S. 1157, 115 S.Ct. 2608, 132 L.Ed.2d 853 (1995), the District Court had overwhelming evidence of a "long-standing" pattern of racial discrimination within the Bridgeport Police Department upon which to base its order approving the Stipulation.

Voluntary compliance, such as the Stipulation that is at issue here, is the preferred method of resolving Title VII violations. *Local Number 93, International Association of Firefighters, AFL-CIO, CLC v. City of Cleveland*, 478 U.S. 501, 515, 106 S.Ct. 3063, 92 L.Ed.2d 405 (1986). It is well settled that a remedy which is obtained through a consent decree may exceed the relief which a court may have ordered after trial. *Firefighters v. Cleveland, id.*, at 478 U.S. 525; *Kozlowski v. Coughlin*, 871 F.2d 241, 244 (2d Cir. 1989). In this case, the relief agreed to by the parties was *less* than the remedy contemplated by the Court and the Special Master, both of whom had considered placing the Department in receivership or the complete dissolution of the Police Commission. The Stipulation is obviously justified in light of the evidence amassed during the history of this litigation and in light of the Police Commission's years-long history of non-compliance with Court orders.

The Stipulation and resulting District Court Order are intended to remedy some of the most important, long-standing Constitutional rights violations that are at the heart of this litigation. "Once a Constitutional violation has been established, 'the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.' " *United States v. Yonkers Board of Education, id.*, at 43. In the *Yonkers* case, the Court further stated that, "The scope of our review of an order designed to remedy a *long-standing constitutional violation* is accordingly narrow: The district court, which has first-hand experience with the parties and is best qualified to deal with the flinty, intractable realities of day-to-day implementation of constitutional commands, must be given a great deal of flexibility

and discretion in choosing the remedy best suited to curing the violation." *Id.*, at 43 (internal quotations and citations omitted, emphasis added). *See, also, Dixon v. Shalala*, 54 F.3d 1019, 1034 (2d Cir. 1995); *Sands v. Runyon*, 28 F.3d 1323, 1327 (2d Cir. 1994); *Bridgeport Guardians v. City of Bridgeport*, 933 F.2d 1140, 1148 (2d Cir. 1991), *cert. denied*, 502 U.S. 924, 112 S.Ct. 337, 116 L.Ed.2d 277 (1991).

The union misstates the holding of *Firefighters v. Cleveland, id.*, at 478 U.S. 529, asserting that the union's consent is needed before the Court approves the Stipulation. In fact, the holding in *Firefighters v. Cleveland*, is precisely the opposite: "While an intervenor is entitled to present evidence and have its objections heard at the hearings on whether to approve a consent decree, it does not have the power to block the decree merely by withholding its consent." *Firefighters v. Cleveland, id.*, at 478 U.S. 528, and cases cited therein.

In relying upon *Firefighters v. Cleveland* the union also conveniently overlooks the facts and holdings of that case. In *Firefighters v. Cleveland*, all courts, up to and including the United States Supreme Court, approved the District Court's adoption of a consent decree over the union's objections that the decree and the resulting court order "adversely affects the rights and interests of employees regardless of whether they were actual victims of past racial discrimination." *Id.*, at 514, fn. 2. The facts cited by the Court as significant in *Firefighters v. Cleveland* bear great similarity to those in Bridgeport. Both cities had lost repeated court battles over racial discrimination during a course of many years (eight years in Cleveland; seventeen years in Bridgeport). Both cities had entered

into consent decrees in order to voluntarily address continuing problems of racial discrimination. In both cities, the union had been invited to participate in negotiations (the union accepted the invitation in Cleveland but refused to participate in Bridgeport). Most significantly, in the Cleveland case, the Court approved a much more far-reaching consent decree than is at issue here. For example, the Cleveland decree included race-conscious relief, something which is utterly lacking in the decree at issue here.

It must also be noted that the union's objection to the Court's "interference" with its collective bargaining agreement is raised ten years too late. In 1990, the union challenged the Court's and the Special Master's ability to purportedly interfere with the collective bargaining agreement's provisions concerning the Police Commission's role in discipline. The union made precisely the same challenge in its "Objection to the Special Master's Recommended Ruling Re: Incident of October 10, 1990." There, the union challenged the imposition of discipline upon certain officers as a result of findings of the Special Master, claiming that the Special Master's actions interfered with the collective bargaining agreement. Judge Daly rejected the union's challenge, holding that the union contract did not override Title VII. The union *never challenged that holding nor did it appeal that holding.* Thus, the union's current appeal is untimely under FED.R.APP.PROC. 4(a)(1) which requires that a notice of appeal be filed within 30 days after the entry of the judgment or order from which appeal is taken. The requirements of Rule 4 are jurisdictional and failure to comply with them is fatal to an attempt to appeal a

District Court's ruling. *Torres v. Oakland Scavenger Company*, 487 U.S. 312, 317-18, 108 S.Ct. 2405, 101 L.Ed.2d 285 (1988); *Branum v. Clark*, 927 F.2d 698, 704 (2d Cir. 1991); *Hulsey v. Sargent*, 15 F.3d 115, 118-19 (8th Cir. 1994).

The primary grounds for the union's objection is that the Stipulation impinges upon the union's collective bargaining agreement, entered into under state law. However, state laws must yield to the requirements of Title VII when obedience to state laws results in a violation of Title VII. 42 U.S.C. 2000e-7. "Because state law must yield to federal law in Title VII cases, . . . we need not consider whether the settlement agreement violates state law." *Kirkland v. New York State Department of Correctional Services*, 711 F.2d 1117, 1132, n. 8 (2d Cir. 1983). *See, also Guardians Association of New York City Police Department, Inc. v. Civil Service Commission*, 630 F.2d 79, 105 (2d Cir. 1980).

Rights conferred by Title VII cannot yield to a collective bargaining agreement. "Title VII's strictures are absolute and represent a congressional command that each employee be free from discriminatory practices. Of necessity, the rights conferred can form no part of the collective-bargaining process since waiver of these rights would defeat the paramount purpose behind Title VII." *Alexander v. Gardner-Denver*, 415 U.S. 35, 51, 94 S.Ct. 1011, 39 L.Ed.2d 147 (1974).

The union contends that the collective bargaining agreement does not require the violation of Title VII and, therefore, the Court should not have removed the Police Commission from its disciplinary role under the union contract. Although the Police Commission is not *required*

to violate Title VII, the fact is that the Commission repeatedly does so in the normal course of its business. The union's position would insulate the Police Commission's discriminatory conduct from the Court's review merely because the union contract could be affected by the Court's remedy.

It cannot be seriously argued that the District Court is powerless to approve the removal of the Police Commission from the disciplinary process simply because there is no state law requirement that the Police Commission discriminate. The Court found that discrimination in the disciplinary process occurs precisely because the Commission is the disciplinary authority. The fact that the Commission achieved that authority through the union contract results in an unavoidable conflict: Either the union contract's provisions must be overridden or the goals of Title VII must be thwarted. Given that choice, the Court's decision in favor of Title VII is the correct choice.

The union asserts that its consent is required in order to enable the District Court to enter the order that is at issue here, citing *Alexander v. Gardner-Denver*, *id.* However, the union ignores the fact that in *Alexander v. Gardner-Denver* the Court held only that voluntary Title VII agreements could not be entered, "absent a judicial determination" justifying their need. *Id.* at 771. In the instant case, a seventeen-year history of District Court findings of racial discrimination provided the basis for the Court's order. The Court's order, although based on the Stipulation of the parties, was also based on and justified by that history of findings of racial discrimination.

The union also claims that the Stipulation imposes obligations on the union without the union's consent. This argument has no merit. In fact, the provisions to which the union objects actually provide greater rights to union members. For example, the Stipulation provides that a respondent officer has the right to bring retained counsel and an additional representative to hearings before the Hearing Officer as well as having the right to union representation. The Stipulation imposes no requirement that the union attend the hearing against its will. Rather, it merely preserves the respondent officer's existing rights to union representation and gives the officer the additional right to bring other representatives to the hearing.

The union also objects to a provision of the Stipulation requiring Hearing Officers to consider whether proposed discrimination is discriminatory. This provision does not impose new burdens on the union; rather, it provides union members with greater rights. If a Hearing Officer finds that a respondent officer's conduct requires discipline, the respondent officer will be *permitted* to present evidence that any proposed discipline is discriminatory. This is an improvement over the current process because the new procedure requires a two-part hearing in which the respondent must first be found to have committed a violation and then informed of the *proposed* discipline. At that point, the respondent can challenge the proposed discipline by showing that it is disparate or unfair. This two-step process ensures that the respondent has the maximum opportunity to challenge both the charges and any proposed discipline and to explicitly raise claims of racial discrimination. The union's objection to this process appears to be that it wishes to be able

to wait until "grievance arbitration" to raise all claims of discrimination. Since the union has never appeared before the Special Master in support of a minority officer, it is difficult to comprehend why the union now expresses this concern over raising claims of racial discrimination.

The union also objects to the requirement of the Stipulation that the settlement of a case pending before a Hearing Officer requires the Hearing Officer's approval. The union speculates that this will interfere with settlements. The actual purpose of this provision is to ensure that no "sweetheart" deals are made to undercut the impartiality of the Hearing Officer's decision so that, for example, white officers are not able to negotiate lesser penalties through the intervention of the union than are imposed on minority officers for similar offenses. If the Hearing Officers' decisions are compromised in a manner which favors one group of officers over another, that would destroy the very reason for using impartial Hearing Officers. In light of that purpose and presuming no desire on the part of the union to foster the unfair imposition of discipline on minority officers, it is unclear why the union would object to such a provision in the Stipulation.

The union also claims that the Stipulation is not intended to address discrimination because it does not apply to "citizen complaints." The union is well aware of the reason that "citizen complaints" are not addressed by this Stipulation: Those complaints are the subject of yet another United States District Court order in a different case, *Barros, et al. v. Joseph A. Walsh, et al.*, 5:72 CV 482 (DFM)(RNC). That case, brought in 1972 and alleging

discriminatory treatment of citizens by Bridgeport police officers and an inadequate response by the Police Commission, also remains pending today under the terms of a settlement agreement, the so-called "*Barros* Decree" approved by then District Court Judge Robert C. Zampano. As the union knows (because it is a participant), mediation is currently taking place to determine whether the *Barros* Decree should be modified (the plaintiffs in *Barros* have asked for the appointment of a Special Master, modeled on the Special Master in this case, because of the Police Commission's failure to properly and fairly adjudicate citizen complaints under the *Barros* Decree). Obviously, the parties to *Guardians v. Delmonte, id.* are not free to negotiate changes to the *Barros* Decree which is, after all, the order of another Federal District Court judge. The fact that the *Barros* case remains active today, nearly *thirty years* after the decree in that case was entered, provides further evidence that the Police Commission remains incapable of fairly resolving disciplinary matters.

Lastly, and serving as further evidence of the union's disdain for minority officers is its inaccurate reference to the Guardians as a "rival labor organization." If the union had, at any time in the past twenty years, addressed the issue of racial discrimination, there would have been no need for the Bridgeport Guardians to do so. The union's attempts to characterize the Guardians as its "rival" demonstrates just how little concern the union has for racial equality. The union's position in this case reveals its complete disregard for the facts and for the history of this case and of minority officers in the Bridgeport Police Department. One would search the record in vain for any

involvement by the union on behalf of a minority officer in this case. Why? Because the union has abdicated its representation of minority officers in cases involving racial discrimination and, as its position here makes clear, is openly hostile to claims by minority officers that their civil rights are violated.

Both the Court and the Special Master found that a properly functioning disciplinary process is essential to ending the history of racial discrimination in discipline within the Bridgeport Police Department. The Court of Appeals correctly affirmed the District Court's Order amending the Court's 1983 Remedy Order in a narrowly tailored manner intended to put into place a prompt and impartial disciplinary process. Accordingly, the petition for a Writ of Certiorari should be denied.

B. This Case Involves Facts Unique to Bridgeport Police Department Which Do Not Create a Significant Issue for this Court

The Bridgeport Police Department's history of racial discrimination and litigation related to racial discrimination, as described above, is a disgrace to the City of Bridgeport but does not raise issues of general significance, precisely because it is such a unique situation. Likewise, the 1983 Remedy Order, as amended in response to this unique history, does not raise issues of such significance that would warrant review by this Court.

Further, the claims now advanced by the union – that the Remedy Order as amended impinges upon the union's contract and state law rights – were raised by the

union in 1990, were the subject of a District Court decision in 1990, and were never appealed by the union at that time. To permit the union to raise these issues now would encourage countless other parties across the nation in cases of all types to attempt to revive claims which were long since abandoned in the District Court, even if they had failed to preserve their rights to appeal years earlier. On this basis alone the petition for a Writ of Certiorari should be denied.

Lastly, this case does not involve and is not asserted to involve a conflict between the Circuit courts and does not involve unresolved or unique Constitutional issues.

CONCLUSION

Accordingly, for all the reasons set forth above, the petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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Supreme Court, U.S.
FILED
SEP 19 2001
CLERK

(3)

No. 01-0166

In the Supreme Court of the United States

AFSCME, Council #15, Local 1159, AFL-CIO,
Petitioner,

v.

Bridgeport Guardians, Inc.;
City of Bridgeport,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

REPLY TO BRIEF IN OPPOSITION

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QUESTION PRESENTED

The question presented is whether the district court's Order of March 24, 2000 was a consent decree which improperly disposed of Union claims and if not, whether the burdens imposed on petitioner Union were minor and ancillary.

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REPLY TO BRIEF IN OPPOSITION

Petitioner labor union submits the following brief in reply to certain new points raised in the brief in opposition of Respondent Bridgeport Guardians. Petitioner Union will attempt to address each point in the order in which such appears in Respondent's brief.

REPLY TO RESPONDENT'S STATEMENT OF THE CASE

A. Guardians v. Delmonte: The 1982 Court Order

Respondent would offer the voluminous post judgment docket entries in this case as evidence of ongoing racism at the Bridgeport Police Department. These entries, however, are indicative of nothing more than the "continued flow of complaints" to the Special Master which, regardless of merit, the district court found "indicative of something wrong". See Pet. App. 39a.

Respondent cites six (6) cases in support of its claim that the Bridgeport Police Department is frequently sued for racial discrimination. Four (4) of these cases, however, involved "disparate impact" challenges to written promotional exams administered by the City's personnel director. Bridgeport Guardians, Inc. v. Bridgeport Civil Service Commission, 354 F.Supp. 778 (D. Conn. 1973), aff'd, in part, 482 F.d 1333 (2d Cir. 1973); Members of Bridgeport Housing Authority Police Force v. City of Bridgeport, 449 F.Supp. 760 (D. Conn. 1980), aff'd in part and rev'd in part, 646 F.2d 55 (2d Cir. 1981); Brown v. Bridgeport Civil Service Commission, B86-282 (D. Conn. 1986); Bridgeport Guardians v. City of Bridgeport, 735 F. Supp. 1126 (D.

Conn. 1990), 933 F.2d 1140 (1991); cert denied, 502 U.S. 924, (1991). As regards the remaining two (2) cases cited, Dobsz v. Delmonte, 553 F.Supp. 601 (D. Conn 1982) did not involve a racial discrimination claim and Bridgeport Guardians v. Delmonte, 553 F.Supp. 601 (D. Conn. 1982) is the underlying decision in the instant case.

B. Decisions of the Special Master

Respondent Guardians repeatedly claim (Guardian's brief at pp. 7-8, 15-17, 23, 37-38) that the Union cannot object to the changes imposed on the collective bargaining agreement by the Stipulation because the Union failed to appeal in 1990 when the district court overruled the Union's objection to a certain recommended ruling by the Special Master. This claim is wholly without merit because the Union never attained party status (limited or otherwise) at that time and as such the Union had no standing to appeal. The Guardians routinely oppose motions to intervene and are well aware that the Union could not appeal in 1990. The 1990 proceedings merit scrutiny, however, because those proceedings are generally illustrative of the unique nature of the "Special Master" proceedings in this case.

On April 3, 1990 the Special Master held an evidentiary hearing concerning an incident in which a supervisor made alleged racial slurs[1] concerning a minority female. The Special Master ordered the City to "secure the attendance" of five (5) supervisors and advised each of his "right to be represented by counsel". One supervisor was

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[1] The substance of these alleged slurs is unknown as the Special Master states only that they were "at least covertly racial in nature".

represented and the remainder appeared pro se. After the hearing, the Special Master issued a Recommended Ruling imposing certain discipline on three (3) of the supervisors.

Although neither the Union nor any of the supervisors were parties to the action, the Union filed an "objection" with the district court contesting the direct imposition of discipline without notice to the supervisors of the charges against them and in contravention of the Union's right to challenge the "just cause" basis of discipline at arbitration pursuant to the collective bargaining agreement. The district court overruled the objection and adopted the Recommend Ruling imposing the discipline.

The Union was not a party and had no reasonable opportunity to intervene in time to attain party status for purposes of its objection. In addition, the Special Master was (again) adjudicating a wholly new Title VII claim that arose after issuance of the judgment in this case in 1982. Furthermore, this all occurred prior to the issuance of Tomka v. Seiler Corp., 66 F.3d 1295 (2d. Cir. 1995) (holding that individuals with supervisory control may not be personally held liable under Title VII). This was the first time the Union had become aware that the Special Master had issued a Recommend Ruling which conflicted with rights protected by the collective bargaining agreement.

Even if, however, the Union was a party and had the right to appeal, declining that right at that time would not preclude the instant appeal. The Union is not contesting the discipline imposed on certain members in 1990 but rather an Order which broadly conflicts with the collective bargaining agreement and deprives the Union the opportunity, indefinitely, to negotiate concerning a mandatory topic of collective bargaining. The Union's concern regarding the

duration of the Special Master's tenure is intimately connected to the Union's concern regarding the 1983 Remedy Order's broad referral of unrelated future discrimination claims to the Special Master. It is in the interest of the Union and its membership for a variety of reasons[2] that these post judgment proceedings come to an end at some point in time.

The broad referral of authority set forth in the 1983 Remedy Order gave rise to a potential for never-ending proceedings before the Special Master. This potential became a hard reality on April 28, 1999 when the district court revealed that its concern was "the continued flow of complaints" to the Special Master regardless of whether "the complaints are eventually held to have merit". This statement gave new meaning to the old adage "anyone can sue" because it placed all parties on clear notice that the Guardians need only continue filing complaints to preserve the "Special Master" system and guarantee their status as a rival labor organization.

C. The Stipulation and the Court's Order

Respondent Guardians claim that the district court's entry of the Stipulation as a court order was based on a record of "seventeen years of findings of discrimination."

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[2] The Union has an interest in negotiating and enforcing the collective bargaining agreement. The Union has an interest in maintaining its status as the exclusive collective bargaining representative. The Union has an interest in having disputes resolved through the grievance arbitration procedure. The Union has an interest in preserving its collectively bargained right to challenge the just cause basis of discipline imposed by the City or its agents.

Respondent's brief at p. 8. The Second Circuit's opinion, however, notes that the district judge "did not explicitly base her remedy order on a new finding of current discrimination." Pet. App. at 14a.

The Stipulation which is the subject of this petition was entered into for the sole purpose of settling a dispute between Respondent Guardians and Respondent City concerning the Special Master's findings in the Joe Ann Simmons matter. The district court had held the City in contempt because the Police Commission made factual findings which conflicted with the Special Master's finding in that matter and the City responded with appeals to the Second Circuit challenging both the contempt ruling and the Special Master's authority to adjudicate wholly new Title VII claims.

RESPONDENT'S REASONS FOR DENYING THE WRIT

A. The Court of Appeals Affirmed the District Court's Order

Respondent Guardians would have this Court believe the record reflects seventeen (17) years of post judgment racial discrimination with the Bridgeport Police Department which justifies the district court's action. In fact, the record reflects seventeen (17) years of post judgment litigation before the Special Master in which the Guardians prevailed in fourteen (14) cases and the City prevailed in ten (10) cases. Pet. App. 54a. The Second Circuit, however, did not base its affirmance of the district court's Order on any finding of racial discrimination but rather the Police Commission's

backlog[3] of pending discipline cases and the Commission's failure to file reports[4] acceptable to the Special Master. Pet. App. 13a-15a.

Petitioner Union has always acknowledged that under Firefighters v. Cleveland, 478 U.S. 501, 528 (1986) it could not block the decree merely by withholding consent. The Union does, however, rely on this Court's holding in that case that a consent decree may not "dispose of the claims of a third party, and a fortiori may not impose duties or obligations on a third party, without that third party's agreement". Id. 478 U.S. at 529. Respondent Guardians would summarily dismiss the Union's claims on the grounds that such claims arise under state law and must "yield" to Title VII. Guardian's brief at pp. 17-18.

The Order and Stipulation at issue directly impact Petitioner Union's ability to negotiate and enforce agreements concerning employee discipline for the indefinite future. This violates not only this Court's holding in Firefighters v. Cleveland, supra regarding disposal of third party rights, but also this Court's holding in W.R. Grace v. Rubber Workers, 461 U.S. 757, 771-772 (1983) concerning settlements of an employer's Title VII liability which are paid for with union contractual rights, as well as this Court's recently expressed "caution against interference with labor-management agreements about employee discipline" in Eastern Associated Coal Corp. v. United Mine Workers, _U.S_, 121 S.Ct. 462,

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[3] The case backlog elimination requirement appears to be the Special Master's 1991 "expectation" that discipline cases will not pend for more than three (3) months. Pet. App. at 91a.

[4] The Master's extensive reporting requirements were ordered in 1990. Pet. App. at 104a-105a.

468 (2000).

Respondent Guardians' contentions regarding the merits of the changes to the disciplinary process imposed through the Stipulation belie the Guardians' status as a rival labor organization. The Guardians still retain the ability to challenge discipline by complaint to the Special Master under Paragraph 10(b) of the 1983 Remedy Order. Pet. App. 47a; 120a-121a. If, as the Union contends, challenges under the collective bargaining agreement are rendered meaningless because arbitrators are unwilling to reverse or to modify discipline decisions by court-appointed Hearing Officers, then the Union has lost its status as exclusive representative as to this mandatory topic of collective bargaining.

The Union has not "abdicated its representation of minority officers". Guardians brief at p. 22. As the Guardians know full well, the collective bargaining agreement has long contained an express prohibition against discrimination "because of age, sex, handicap, marital status, race, color, creed, national origin, political affiliation or union membership". There is nothing in this lengthy record to establish that the Petitioner Union has discriminated against minorities or refused to enforce any provision of the collective bargaining agreement, including the nondiscrimination provision, on behalf of minorities. The Union's position as to the merits of the changes imposed by the Stipulation is based on its years of experience bringing "just cause" challenges to discipline.

B. This Case Creates a Significant Issue for this Court

This case involves changes of indefinite duration to a municipal employer's disciplinary procedure which were

negotiated between an employer and a minority employee organization and implemented through a consent decree over the objection of the labor organization designated to act as the exclusive collective bargaining representative. The changes were negotiated to settle a dispute between the municipal employer and the minority organization concerning the continuing jurisdiction of a Special Master to adjudicate wholly new Title VII claims seventeen (17) years after the district court's order of referral. The changes were justified by the district court and the court of appeals in the absence of any current violation of federal law and solely on the basis of the failure of a municipal board composed of citizen/volunteers to meet the Master's administrative requirements. The substantial impact of these changes on an innocent intervener merit this Court's review. Absent such review, the decision by the court of appeals will serve as licence for employers and minority organizations elsewhere to negotiate agreements in derogation of collectively bargained rights.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

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